



Tuesday, May 23
2:00–3:30 pm

801 Moving Up the Ladder: How to Advance within the In-house Profession

New to In-house Track

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**OUTLINE FOR CORPORATE COUNSEL UNIVERSITY PANEL
MOVING UP THE LADDER: HOW TO ADVANCE IN THE IN-HOUSE
PROFESSION**

I. Overview

At the end of the day, career management for us as in house counsel comes down to three options. First, we can continually add to our ‘tool kit; as lawyers, with hopes of landing a spot higher up the ladder in our own department or moving to a more senior post with another law department. Second, we can consider whether to reinvent ourselves as business people. If that option has appeal, positioning ourselves (through formal education, mentoring and networking, can help make the hoped for transition a reality. Third, we can decide to grow horizontally rather than vertically. In short, to remain where we are in terms of title, but to identify opportunities to grow as leaders and attorneys within our current position.

II. Option A – Moving up the Ladder

A. Advancement Opportunities – Reality or Pipe Dream

1. Company’s growth strategy
2. Trends re use of In house Legal staff

B. What is required to make it happen

1. Tangibles
 - a. Drafting skills
 - b. Negotiation savvy
 - c. Management expertise
2. Intangibles
 - a. Cultural Fit
 - b. Professional image
 - c. Values Survey

C. Looking Outside

1. Relocation – Yes or No
2. GC only?
3. Public company or private?
4. Ground floor opportunity?
5. Network!

II Business Person at Heart?

A. Tangibles

1. Skill set (consider MBA program)
2. Are the opportunities there?
3. Is the opportunity a better one?

- B. Intangibles
 - 1. Values Survey
 - 2. My personality
 - 3. My identity
- III. Horizontal Growth
- A. What do I have now?
 - 1. Job satisfaction
 - 2. Job security
 - 3. Professional growth
 - B. What do I value most?
 - 1. Values Survey
 - 2. Exploring Professional Growth
 - 3. Exploring Personal Growth

VALUES SURVEY: WHAT MATTERS IN YOUR WORK LIFE?

Please check the category that best describes your role in the Legal and Regulatory Group:

- _____ Administrative Assistant
 _____ Paralegal
 _____ Corporate Counsel
 _____ Senior Counsel
 _____ Assistant General Counsel and/or Vice President (Legal)
 _____ Vice President (Regulatory)
 _____ Director (Legal)
 _____ Director (Regulatory)
 _____ Manager (Legal)
 _____ Manager (Regulatory)
 _____ Regulatory Analyst

Please rank the following “values” in order of their importance to you personally. Begin with “1” as most important and end with “10” as least important.

- _____ **Advancement in Title:** the ability to advance to the next level in title.
- _____ **Benefits:** Non-cash benefits such as vacation, pension, medical and dental coverage, life insurance
- _____ **Career Opportunities:** the opportunity to move to a non-legal job in a different department.
- _____ **Company Culture:** the existence of a positive culture in the department and company.
- _____ **Compensation:** cash compensation (salary and bonus) and long-term compensation (options, restricted stock)
- _____ **Flexible Work Schedule:** the ability to work flexible hours and/or to utilize telecommuting.
- _____ **Independence:** the ability to make decisions regarding practice area independently.
- _____ **Management Opportunities:** the opportunity to manage others, either through as direct reports or through a formal mentoring relationship
- _____ **Personal Development:** the ability to pursue developmental opportunities such as targeted courses (e.g., Business Presentation Skills, Financial Skills), broad range development courses (Emerging Leaders, Executive Development), and community service (e.g. Pro Bono)
- _____ **Professional Development:** the ability to pursue developmental opportunities (participating in professional associations, writing articles and speaking engagements) exposure to new practice areas, service on company/client task forces and other industry leadership roles
- _____ **Quality Work:** involvement in challenging and interesting work that provides high visibility

RETURN RECEIPT

Extraordinary customer service begins with clear communication and setting reasonable expectations.

When a client leaves a voice mail or sends an email, you have an opportunity to begin this process (and to let your client know that you are in the office, received the message, and will assist on the project).

Some suggested 'Return Receipts' for your consideration:

Request to Prepare/Review Document:

- (a) When you have adequate information for a first draft –

Dear (Client) – I received your message asking my assistance in (preparing/reviewing) an agreement. I'd be delighted to assist, and anticipate that I can have (a first draft/a redline) back to you by (date). If this timing doesn't work within your schedule, please let me know and I'll try to make arrangements to get the document to you more quickly. Thanks!

- (b) When you need more information to prepare a first draft -

Dear (Client) – I received your message asking my assistance in (preparing/reviewing) an agreement. I'd be delighted to assist, and suggest that we set up a call so that I can get more details about the deal terms. My Outlook is current, so please feel free to send me a meeting planner for a time that works best for you. Thanks, and I look forward to speaking with you.

- (c) When you need more information to prepare a first draft –

Dear (Client) – I received your message asking my assistance in (preparing/reviewing) an agreement. I'd be delighted to assist; to move this project along as quickly as possible, I'll need more information about:

- 1) the length of the contract
- 2) the rates
- 3) key business points that are critical to you

Once I have this information, I anticipate that having (a first draft/a redline) back to you by (date). If this timing doesn't work within your schedule, please let me know and I'll try to make arrangements to get the document to you more quickly.

Thanks!

Request to Handle a Project that Isn't a "You"

Dear (Client) – I received your message asking my assistance in (preparing/reviewing an agreement)(advising on ____). Your situation sounds as though (litigation/privacy/intellectual property, etc. issues) are involved, so I've forwarded your message to (____, our litigation/privacy/intellectual property) expert. I'm sure (---) will be in touch with you shortly. In the meantime, if I can do anything further to help, please let me know. Thanks!

ALL DRESSED UP BUT NO PLACE TO GO?

When you transitioned from law firm associate to in house counsel, you anticipated a learning curve. You were now expected to deliver an excellent legal product while simultaneously growing your business acumen, learning the corporate culture, and gaining respect from a dual constituency of legal colleagues and business clients.

You've accomplished all that, and more. Once primarily a scrivener at client meetings, your business acumen and confidence have grown so that you significantly contribute to both strategy and development of business deals. Down the hall in Legal, you're considered the 'lawyer's lawyer' - a professional who is current on laws and regulations and has a negotiating strategy or boilerplate clause suited to every need.

You skillfully navigate the corporate culture, a complex and multifaceted system far more bewildering than your law firm's two-tiered structure. Observing early on the importance of mentors, you aligned yourself with a savvy insider and tirelessly absorbed facts and patterned behaviors until you too could pass as a corporate long timer. Taking learning to the next level, you studied both where your clients fit in the company hierarchy and where your company stands within its industry. Recognizing the value of networking, you joined committees, supported corporate initiatives and industry organizations. You even (surreptitiously, of course) practiced business presentation skills and consulted a 'dress for corporate success' guru.

Initially, the pay off was clear: your promotion from entry level attorney came less than three years into your new career. Pausing only briefly to enjoy your larger office, increased perks and "Senior Counsel" status, you're eying the loftier - but undoubtedly attainable - role of Deputy GC.

You've continued doing the things that supported your rapid advancement. Surprisingly, though, you now hear discouraging comments about promotion opportunities. The phrases 'pyramid structure' and 'slow or no growth' are bandied about in staff meetings and reviews. Growth (at least the kind you'd hoped for where your company regularly acquired smaller operations) has stopped. Organic growth, measured in millimeters instead of miles, is the official strategy. Your company, once a dominant industry player, now finds itself competing on all fronts.

Trouble signs are also evident in the legal department. One or two attorneys repeatedly get the nod for key task forces, slots in the elite executive development program, and jaunts to industry events. Important opportunities (representing a new product line or department) are snapped up before you even know they exist. You find yourself increasingly isolated, working hard and delivering results, but receiving no significant recognition. Talent reviews - those critical pathways in succession planning - describe you as solid and competent, but others are placed in the rising star category.

Slowly and reluctantly, the possibility that you may have capped out – after only one real promotion – creeps into your mind. Long before you thought possible, you face critical decisions about job satisfaction, career choices, and your very future in the company.

The options: leverage your business skills and join your clients; use your talents as a springboard for a higher position in another legal department (or possibly a law firm); or, stay in your Law Department and carve out a satisfactory (although flat) career path.

From Lawyer to Business Person

While your B school classes were pretty scant, involvement in endless business meetings and review of countless deal memos and term sheets since going in house have given you more than a passing knowledge of the business world. You think you're smart enough to master the material – but, are truly suited to be a corporate exec?

Unlike the move in house, this career step takes you out of your comfort zone. With 10 plus years as an attorney behind you, the idea of abandoning that title, and the security it brings, is intimidating.

Some questions to ponder:

1. How strong are your management skills? As a director, VP or similar business leader, your ability to recruit, motivate, and retain the best (while simultaneously avoiding or dismissing the worst) is essential.
2. Do you think risk is a four letter word? Unlike the law, which often proceeds at a slower pace and offers ways to draft around, ensure against and plan for uncertainties, business decisions often come quickly, without adequate information, supported by little or no safety net. Many skilled execs fall prey to volatile economies, unexpected competitive changes and oddball personnel issues; are you comfortable rolling the dice?
3. Is the pyramid structure alive and well on the business side? Although offering more and different levels, significant advancement opportunities may be equally limited. And, is the business position you seek really a better deal (factoring in both hard and soft compensation and job security) than your current level?

Once a Lawyer, Always a Lawyer

After a real world look at the business side, you may conclude that being a lawyer is a better fit. Now, ask yourself:

1. Is the timing right? Often, the race for that next promotion becomes an end in itself, causing you to lose sight of overall development needs. Is your tool kit fully

equipped and readily transferable? Are you more likely to find opportunities elsewhere if you move now, or a few years from now?

2. What's your dream job? Managing a department and shaping corporate policy as general counsel? Or, is being the resident subject matter expert really your cup of tea?

3. Can you go home again (that is, back to a law firm), with marketing pressures, unpredictable schedule and - worst of all - time sheets?

4. Have you identified the culture that best suits your values and goals, and do you have a viable plan to find it? Your ability to thrive often hinges on something as amorphous as culture. Don't underestimate its importance; do seek out the culture that fits you best.

These options both involve leaving your current job. Some homework before taking that giant step:

- **Take a reality test** – through every resource possible, assess the realities of your current position and potential for advancement. Ask you boss those tough questions: Will I be promoted? When? Or, why not?
- **Do your due diligence** - do everything possible to understand the realities of potential jobs. Every company, department and function has unique flaws – identifying them and honestly assessing their impact on you is critical.
- **Do a gut check** – how do you feel about staying? About leaving? If the thought of walking away from your current job doesn't cause at least a slight pang, its time – actually, it's past time – to walk away. On the flip side, if that prospective position doesn't fill you with excitement and energy (that all-important reason to get out of bed in the morning) you know it's not the one.

Success is What You Want it to Be

The last option – to stay put and redefine a successful career path – is paradoxically the easiest and the hardest choice. Staying is easy in that you don't risk losing your professional identity, dealing with multiple unknowns, or abandoning the positive aspects of your job. By staying, you'll continue to reap the benefits of your hard won respect and esteem.

The difficult part, though, is making a success of the horizontal path open to you. Step one is honestly assessing your talents and values, cutting through what you think others expect of you to reach your own aspirations. You've got to do the difficult pre-work of setting aside your bruised ego, accepting the injustice of limited opportunities, and letting go of your original ambitions before you can set about redefining success.

Ask yourself some tough questions:

1. What about your job brings you greatest joy? Be honest here – before answering ‘managing people’ consider whether you really like that responsibility, or if you are willing to manage because that what’s required to move up the ladder. Being a legal expert - crafting the perfect contract, writing articles or speaking to outside groups, and serving as your company’s go-to authority, may really be what you love.

2. What are your truest talents? How can you leverage those abilities in new directions? If coaching is a natural and gratifying experience, consider acting as a mentor in a company or industry program. Gifted in strategic planning? Apply your talents in a professional or industry organization. Like to teach? Try your hand at teaching legal issues to clients, or beyond your company in local colleges or paralegal schools.

Once again, the reality test and gut check are musts. If you stay, chances are one or two attorneys will move up (and over) you. Eventually, you’ll reach the top of the salary band, and economic rewards will dwindle. At times, the redundancy of your job may leave you bored or frustrated. And, at the worst possible times, those long buried ambitions may reassert themselves.

For some, resolving these emotions and crafting a horizontal but fulfilling career path simply isn’t possible; for them, leaving is definitely the best way to go. But, for those who can redirect ambitions toward new goals, an amazingly rich and rewarding career is waiting exactly where you are.

From Lawyer to Business Partner

By Veta T. Richardson

Career Advancement in Corporate Law Departments

THE ROLE OF corporate law departments has evolved from being primarily an intermediary between the company and its law firms to being a full-service legal team involved in every major business decision. Historically, corporate law departments focused on handling routine legal matters while more complex legal issues were managed by outside law firms.

Over the last decade or so, corporate law departments have undergone an evolution. The law department of the 21st century has increasingly aligned its management structure and goals to match the strategic objectives of the corporation. The result has been a more seamless integration of lawyers with the business team.

Veta T. Richardson, "From Lawyer to Business Partner: Career Advancement in Corporate Law Departments," *ACC Docket* 22, no. 2 (February 2004): 70-75.
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Similarly, the role of the general counsel has changed. In a recent survey, CEOs of Fortune 500 companies were solicited regarding their views on the role of the general counsel.¹ All of the respondents agreed that the general counsel must "direct the legal team to outstanding results." Law departments were viewed not as "back-water" service functions, but as critical partners in all business decisions.

General counsel likewise view themselves as part of the senior business team, and the role of their law departments is to facilitate the attainment of business goals within the boundaries of the law. For many attorneys who came in-house from law firms, this role represented a major shift in the way that they looked at practicing law, a shift from being the content expert—providing "pure" legal advice—to articulating the legal context, tradeoffs, and risks for making particular business decisions. The most successful in-house lawyers make the transition from "pure lawyer" to business partner.

CONTINUALLY REASSESS AND CLARIFY YOUR PROFESSIONAL GOALS IN RELATION TO YOUR PERSONAL NEEDS, VALUES, AND PRIORITIES. THEN GO FOR IT WITHOUT REGRET!

In December 2001, the American Corporate Counsel Association ("ACCA") (now known as the Association of Corporate Counsel ("ACC")) published the first national demographic survey of roughly 65,000 attorneys working in corporate law departments. The demographic profile of the ACCA in-house survey is consistent with the overall gender and race composition of the profession: roughly 30 percent of the in-house attorneys are women, and 12.5 percent are people of color. The ACCA survey also indicated, however, that women and

minority attorneys were disproportionately represented in lower-level staff attorney positions. Similarly, a study by Catalyst, Inc., titled *Women in Law: Making the Case*,² found that women working in-house had longer tenure and lower titles than men. A variety of other sources, including the Minority Corporate Counsel Association ("MCCA"), have documented various career obstacles that women and people of color have experienced in corporate law departments.

MCCA

Based in Washington, DC, the Minority Corporate Counsel Association ("MCCA") is a privately funded 501(c)(3) nonprofit association that focuses exclusively on diversity issues in corporate law departments and the law firms that they retain. In addition to publishing a magazine and offering educational programs, MCCA has developed a body of knowledge on diversity best practices and the changing demographics within the in-house community. In-house counsel may obtain a free copy of *From Lawyer to Business Partner* by emailing a request to shawnboynes@mcca.com or visiting www.MCCA.com.

Given the mixed picture of progress for both women and minorities in corporate law departments, MCCA teamed with Catalyst to complete a series of interviews with leading general counsel and conduct focus groups in several geographic areas. The charge was to solicit candid perspectives regarding what it takes for lawyers to move up the corporate ladder. The findings were intended to provide valuable information designed to empower in-house counsel to better manage their careers and pursue their professional objectives, particularly in-house women.

MCCA combined Catalyst's findings with the results of two independent surveys of the views of Fortune 500 CEOs and general counsel. The result is *From Lawyer to Business Partner: Career Advancement in Corporate Law Departments*, a report published by MCCA under its multiyear research initiative, *Creating Pathways to Diversity*.[®] See the sidebar on page 73 for highlights of those findings.

A key finding of *From Lawyer to Business Partner* is that, in order for in-house counsel to develop the leadership currency to advance their careers, they must be willing to take the following actions:

- **Take risks.** Risk-taking forces one to rely upon inner strengths, learn new skills, and broaden experiences. Whether it's taking stretch assignments or a new role in an unfamiliar area of the law/business, learning to work outside of one's comfort zone is a key to leadership. No one ascends to the top by always playing it safe.
- **Take credit.** Recognition of your personal contributions is critical to your visibility within the department and is a key to advancement. For many women, standing in the spotlight to receive praise for contributions is a behavior that is especially uncomfortable. For women who shy away from recognition, preferring instead to let the team take credit (even for their own contribu-

tions), MCCA says, get over it. Within the cultural norms of their departments, women must learn how to toot their own horns.

- **Take stock.** Think about what's important to you and how you define yourself and success. Avoid being influenced by others' definition of success, or you may pursue it in ways that are out of step with who and what you are, and you will end up feeling out of balance. Be clear about your wants/needs, your values, your priorities.

Continually reassess and clarify your professional goals in relation to your personal needs, values, and priorities. Then go for it without regret!

The research also found that in-house women in particular were less adept at incorporating the above career strategies. This fact likely contributes to why their careers have not progressed at the pace of those of their male counterparts and why, despite strong representation in-house, women tend to have longer tenure but lower titles.

RESEARCH FINDINGS

In addition to advising that in-house women need to focus more on taking stock, taking risks, and taking credit, several other key findings resulted from research by the Minority Corporate Counsel Association ("MCCA"):¹

- The most common route to the general counsel position has been moving in-house from an associate or partner position in a law firm.
- The primary reasons for moving in-house were to seek better work/life balance, to avoid the business development pressures in a law firm environment, and to have a more active role in the decisions of clients.
- Success in-house comes from understanding the business and functioning as a business partner to clients.
- Unlike in law firms, advancement in-house is not linear but the result of developing relationships with business people across the organization and increasing the sphere of influence through time.
- Risk-taking is a key personal strategy for attorneys seeking to develop their "leadership currency."
- Mentors played an important role in helping attorneys to navigate the corporate environment.
- Although attorneys have more control over their time than in a law firm environment, the changing role of the general counsel results in increased demands on accessibility and time.
- Women were more likely to have made work/life tradeoffs, such as delaying children or marriage, and to reflect on what they had forgone, although both women and men general counsel with children were equally likely to have a stay-at-home spouse.
- Women attorneys working in-house are seeking to create their own definition of success, which includes a meaningful role at home and at work.
- General counsel must be prepared to lead increasingly diverse legal teams, and this diversity entails promoting the inclusion of talented and involved women and minorities from their primary law firms, not simply tokens for client calls.

NOTE

1. Creating Pathways to Diversity®, *From Lawyer to Business Partner: Career Advancement in Corporate Law Departments*, © MCCA, 2003, is available from the MCCA website at www.mcca.com/site/data/researchprograms/RosePathways/index.html or by emailing shawnboynes@mcca.com for a hard copy.

From this point on . . .
Explore information related to this topic.

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 202.293.4103, ext. 314, or windley@acca.com or visit ACCA OnlineSM at www.acca.com/networks/ecommerce.php.
- *Achieving Diversity*, an ACC InfoPAKSM available on ACCA OnlineSM at www.acca.com/infopaks/diversity.html.
- American Intellectual Property Law Education Foundation, at www.acca.com/networks/aiplef.php.
- *Career Options for In-house Counsel*, an ACC InfoPAKSM available on ACCA OnlineSM at www.acca.com/infopaks/caroptions.html.
- *Creating Pathways to Diversity*[®], *From Lawyer to Business Partner: Career Advancement in Corporate Law Departments*, © MCCA, 2003, a report published by the Minority Corporate Counsel Association ("MCCA") under its multiyear research initiative, *Creating Pathways to Diversity*[®] available from the MCCA website at www.mcca.com/site/data/researchprograms/RosePathways/index.html or by emailing shawnboynes@mcca.com for a hard copy.
- DiverseCounsel.Org, at www.diversecounsel.org/.
- "Diversity in the Legal Profession," *ACCA Docket* 14, no. 5 (September/October 1996): 32–34, available on ACCA OnlineSM at www.acca.com/protected/pubs/docket/so96/diversity.html.
- *Global Counsel Best Practice Indicators: Finding, Keeping, and Motivating Talent*, at www.practicallaw.com/A34140.
- Heidrick & Struggles International, Inc., and Minority Corporate Counsel Association, "The Fortune 500 CEO Survey on General Counsels" (2000) ("MCCA CEO Survey"), at www.mcca.com/site/data/AboutMCCA/#CEO.
- *Managing Legal Talent*, at www.practicallaw.com/A20920.
- Stacey Mobley, "Priming the Pipeline to Diversity in the Legal Profession," *ACCA Docket* 19, no. 6 (June 2001): 78–89, available on ACCA OnlineSM at www.acca.com/protected/pubs/docket/jj01/prime1.php.
- Peter M. Phillipps, "Small Law Departments Can Achieve Sustainable Diversity," *ACCA Docket* 19, no. 6 (June 2001): 40–57, available on ACCA OnlineSM at www.acca.com/protected/pubs/docket/jj01/achieve1.php.
- *Pipeline to Diversity*, at www.acca.com/practice/diversity.php.
- Gloria Santona, "McDonald's Legal Department Takes Law to the Street," *ACCA Docket* 20, no. 8 (September 2002): 96–105, available on ACCA OnlineSM at www.acca.com/protected/pubs/docket/so02/mcdonalds2.php.

ON PAPER:

- Catalyst, Inc., *Women in Law: Making the Case* (call Catalyst, 212.514.7600, to buy the report).

If you like the resources listed here, visit ACC's Virtual LibrarySM on ACCA OnlineSM at 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 202.293.4103, ext. 342, or 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.

For lawyers of color, an additional key finding was the important role that their parents had played as their first and perhaps most influential mentors. Whether their parents had business backgrounds did not really matter. What mattered was that the lawyers of color had their parents to turn to in order to understand and deal with issues of race in society. Interestingly, none of the white women participants talked about having been similarly prepared by their parents regarding gender issues. In fact, many of the women reported feeling sorely ill-prepared to address the challenges that they encountered in the business world and were caught somewhat off-guard by their early brushes with gender stereotyping and discrimination. Thus, for women and people of color, an important lesson is the importance of having a range of mentors to help guide one's professional growth, including how to address the challenges posed by being part of a minority gender or race.

Based upon the above findings and others, MCCA prepared the list in the sidebar on page xx to help minority and women attorneys.

It is an exciting and challenging time for in-house counsel. The job has evolved, and the expectations have changed. These days, the pipeline to general counsel is full of high-potential women and minorities. The goal of MCCA's report is to help all in-house counsel meet their fullest potential by shedding light on what it takes to advance in today's competitive corporate law department and to empower in-house counsel to use this wisdom to define their unique career paths. ■

NOTES

1. Heidrick & Struggles International, Inc., and Minority Corporate Counsel Association, "The Fortune 500 CEO Survey on General Counsels" (2000) ("MCCA CEO Survey"), at www.mcca.com/site/data/AboutMCCA/#CEO.
2. For more than 40 years, Catalyst has served as a leading resource for women business executives. Catalyst, Inc., *Women in Law: Making the Case* (call Catalyst, 212.514.7600, to buy the report). *Creating Pathways to Diversity*®, *From Lawyer to Business Partner: Career Advancement in Corporate Law Departments*, © MCCA, 2003, is available from the MCCA website at www.mcca.com/site/data/researchprograms/RosePathways/index.html or by emailing shawnboynes@mcca.com for a hard copy.

MCCA'S TOP 10 RECOMMENDATIONS TO GUIDE THE CAREERS OF IN-HOUSE COUNSEL

1. Develop solid substantive legal ability and develop a reputation for being an outstanding lawyer.
2. Be honest with yourself about your strengths and shortcomings and be clear about your personal and professional priorities.
3. Understand the business of your employer so that you have the ability to identify how you can fill a critical need, contribute additional value, and effectively communicate legal issues to nonlawyer business teams using their language, not your own legal jargon.
4. Be visible within your company and in your industry. In addition to not being shy about discussing your contributions, invest time getting to know your colleagues by developing your relationships with those in the law department, as well as the business units.
5. Don't simply play it safe: take appropriate risks with a view to those that will improve your skill set, demonstrate "out-of-the-box" approaches, and distinguish you as a leader.
6. Cultivate solid mentoring relationships with people who can help you guide your career and who will offer you sage advice.
7. Learn the art of effective time management, prioritizing, and delegating in order to refocus your expenditure of time and resources on value-added work.
8. Develop solid support bases at work and at home to help you maintain a healthy work/life balance that is in keeping with your personal values.
9. Avoid letting others' expectations define your definition of success and don't hesitate to shift your goals or priorities as your own needs and expectations evolve.
10. Develop leadership skills with sensitivity to the fact that the diversity of those whom you lead can be a key asset to your organization but that you must cultivate your ability to manage across differences and build a high-performing team.

GC Rules: OVER 350

Things I Wish I'd Known My First Year as General Counsel

It's been four years since the original draft of this article appeared in what was then the *ACCA Docket*. Fastforward a bit, the association has a new name and an increased focus on the global aspects of in-house lawyering. And the legal landscape for in-house counsel now has a large and looming new fixture, called the Sarbanes-Oxley Act of 2002.

Yet nearly all of the original advice we offered to new GCs in 2001 remains relevant and useful. What should you do to get up to speed? What do you need to know about contracts? How do you handle employment matters? Where are the traps for the unwary in intellectual property? What about for securities filings? How do you correctly assess corporate dynamics? These are only some of the topics that we hit on last time, and (dare we say it) those tips have stood the test of time.

With the help of several new contributors, we have added dozens more tips and from-the-street wisdom. Surprisingly, while many contributions covered Sarbanes-Oxley, most focused on how best to build the right relationships within the company and to be

more effective at all aspects of the job.

Of course, even those who aren't GCs can benefit from the wisdom we've collected here. And we hope you do.

We would be delighted to hear from you when you want to add your own wisdom from the trenches for the next update. Please send them to D. C. Toedt at dc.toedt@bindview.com (with a copy to dc@toedt.com). We will try to use all contributions, but we can't make any promises. If you don't indicate otherwise, we will assume that you are willing to have your name listed as a contributor.

Any views expressed here are the present, personal views of the respective contributors and not

By D. C. Toedt III, Robert R. Robinson and Randy S. Segal



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necessarily those of other contributors nor of any contributor's organization and/or clients.

GETTING UP TO SPEED

Documents to Review

1. Read the following documents to the extent they are applicable to your company (use a site such as www.10kwizard.com to retrieve/download SEC filings easily). If you can do so before your first day on the job, it can help you hit the ground running. Also, your questions about the documents can serve as the basis for introductory meetings with the important people who can answer those questions.

- the articles of incorporation and any amendments thereto
- the audit-committee charter
- the by-laws and amendments thereto
- the company's last few 10-K, 10-Q, and 8-K reports
- the S-1 registration statement (if the company did an IPO within the past few years)

The authors also wish to thank the following people who made valuable contributions to this article:

- Steven T. Atneosen, CarParts Technologies™
- James Bellerjeau, Mettler-Toledo International, Inc.
- Richard L. Bernacchi, Irell & Manella, Los Angeles
- Jodie Brokowski, Team Health Anesthesia Management Services, Inc.
- Richard W. Bohan, Senior Counsel, Shell Oil Co., Houston
- Deborah Butler, Unisys Corp.
- Carlton S. Chen, Colt Defense LLC
- Elisa Garcia, Domino's Pizza
- Marc E. Grossberg, Thompson & Knight, Houston
- Ann M. Hamilton, Fuel-Tech N.V.
- Mark E. Harrington, Guidance Software, Inc.
- William N. Hulsey III, Hulsey, Grether, & Fortkort LLP
- Charles D. (Chad) Huston, Thompson & Knight, Austin (former in-house at Schlumberger)
- Robert W. Johnson, ExxonMobil Production Company
- Henry W. (Hank) Jones III, Law Offices of Henry W. (Hank) Jones III (former general counsel, Ashton-Tate)
- Bruce M. Levy, Rice Foodmarkets, Houston
- Philip C. Maynard, FileNet Corporation
- Pete McCorkell, Senior Counsel, Wells Fargo
- James Patton, New England Tech
- Michael Pillow, Siemens Power Generation
- Christopher R. Ryan, iCode, Inc.
- Joseph Schohl, DaVita Inc.
- S. Caroline Schroder, Law Offices of S. Caroline Schroder, PLLC
- Sandy Shepard, General Counsel, President and CEO, Good Solutions, Inc., San Rafael, CA.
- Stephen E. Stein, Thompson & Knight, Dallas
- Claude M. Stern, Fenwick & West, Palo Alto
- Nick Thakar, Tower Records
- Vivian Tseng, General Counsel, Welch Foods Inc.
- Tim Wahl, Citigroup
- Bass C. Wallace, Jr., TETRA Technologies, Inc.

- the description of the business and of risk factors in the above documents
 - employment contracts, stock-option agreements, and change-of-control agreements for key executives
 - the last few proxy statements
 - the exhibits to your SEC filings (are they up to date?)
 - press releases from the last year or so (available at, e.g., www.yahoo.com)
 - the legal-matters responses to the auditors in the last couple of audits.
 - pension plans
 - stock-option plans
 - separation agreements for recently-departed executives
2. Consider creating a rough timeline/document index for some of the significant events described in the above documents—product releases, person-

ACC Docket

nel changes, etc. It can be a valuable learning exercise, and the timeline/index can be a useful tool.

5. Make yourself a crib sheet of significant corporate data such as:

- current estimates for quarterly and annual revenue and earnings-per-share (EPS)
- historical numbers for revenue and EPS for the past quarter and year
- number of shares of stock issued and outstanding
- number of shares available for employee/executive stock options
- board meeting and audit-committee meeting schedules
- contact information for board members

4. Look at competitors' proxy statements, 10-Ks, 10-Qs, etc., to see what *they* are disclosing/discussing. This also helps you get more familiar with your company's market environment.

5. Review your company's public website, including the investor relations and corporate governance sections. If yours does not have a corporate governance section, make sure one is added that contains your corporate governance guidelines, committee charters, and code of conduct.

6. Review the most recent management letters delivered by the auditors to management.

Digging In

7. Revenue recognition: Learn the basics. Ask your accounting people what the revenue-recognition hot buttons are for your industry segment.

8. For those who did not pick up some basic accounting courses along the way, try to do it soon. Learning how to read a balance sheet and understanding Generally Accepted Accounting Principles (GAAP) will help you immensely.

9. Learn the business of the company, including gross margins of products, the technology, and the position of the company in the industry.

10. Learn as much as you can about the business and business drivers of your client. There are no stupid questions when it comes to learning about the business.

11. Learn how the company's products are made, inventoried, distributed, and sold.

12. Spend some time on the assembly line or factory floor (if applicable).

13. Learn how the shifts rotate, how breaks are administered, how employees get their information, and how management practices what it preaches.

People To Talk to First

14. Talk to the CEO. Understand what his/her and the company's goals are, and what the key issues are facing the company. Start to think about how you can help the company meet its goals.

15. Talk to the heads of departments. Find out what they would like to see by way of legal support. Ask whether there are any immediate issues or problems they would like to have addressed, and whether any are already being worked on. Ask if they see any issues or problems on the horizon.

16. Ask your accounting people whether there are any accounting or tax issues that are especially relevant to your company, your business segment, or your industry.

17. Get to know the audit partner and audit manager at your company's outside accounting firm.

18. Establish a good relationship with your predecessor (in-house or outside, lawyer or non-lawyer). Find out whether that person still has the confidence of upper management. Pick that person's brain as often as he or she will let you.

19. Know who your business client is. There are a lot of constituencies and agendas out there in your company. Remember that as you formulate your advice.

CONTRACTING ISSUES

20. In one sense, a contract is simply a business plan. Its purpose is to address the likely "what-ifs" that can arise in a business relationship. A long-term business relationship will have more potential what-ifs, and therefore will need a more detailed business plan, than a short-term relationship.

21. The most useful function of a letter of intent—arguably its *only* proper function—is to establish that the parties do *not* intend to enter into a contract at that time.

22. The fewer physical pages a contract has, the more aesthetically acceptable it will be to your management and to the other side. This is true even if you crowd in a lot of text with a small font. (Microsoft's contracts are usually done in 9-point Times Roman, a fairly small font.)

23. In contract negotiations, no matter what your substantive differences, always be unfailingly courteous to the people on the other side. You never know what the future holds; the negotiation

adversary whom you offend today may later be in a position to tell a prospective customer that your company can't be dealt with—or to tell a prospective future employer that you're a real jerk and shouldn't be hired.

Sales Contracts

24. Never underestimate the importance of sales contracts. You may enjoy the high-level legal work, but its importance pales in comparison with that of keeping revenue flowing.

25. Try to engineer your sales-contracting processes so that sales reps don't derisively refer to Legal as the "Sales Prevention Department." If you don't get a contract (or a markup of the other side's contract) to the sales people on time (or before), the train may well leave without you, regardless of how bad the draft was.

26. Remember that in a sales negotiation, every customer request is a marketing opportunity. If one customer wants a particular concession, it follows others might want the same thing—and if you can figure out how to give it to them, you may achieve a competitive advantage and maybe even generate extra revenue from it.

27. When responding to a customer demand letter, always temper your defensive posture with some form of offer to address the disgruntled customer's issue. This will make your company look much more reasonable when your response becomes Exhibit A in a lawsuit.

Contract Drafting

28. Understand what your client's objectives are. Then try to ensure that the proposed contract achieves those objectives.

29. How long should a contract be? The usual answer is "long enough."

30. When drafting a contract, try to stick to standard contract architectures and language to speed up the other side's contract review and thus the negotiation. On the other hand, *think*—don't necessarily use archaic forms or language just because "that's the way it's always been done."

31. Try to anticipate problems in contract performance, and put in some "outs" for your client.

32. Alternative remedies should be included in the contract, in addition to the "outs," whenever possible. For example, liquidated damages are OK when

you can get them but are usually hard for the other side to agree to; they also don't assure that you will get the performance being bargained for. Consider providing for alternative ways of getting the job done. For example, in a system procurement contract, consider negotiating for upgraded or extra equipment for free or at discounted prices if the system doesn't meet performance metrics; or for free or discounted services to resolve issues with system capabilities or performance that are related to software development or other areas that can't be solved by throwing more hardware at the problem.

33. Sunset clauses are important—most rights and obligations should come to an end at a time certain (or at least a time determinable). In some circumstances, the absence of a sunset clause for particular rights or obligations can cause your auditors to refuse to allow you to recognize revenue.

34. Consider including illustrative examples in your contracts. Example: If a contract requires a complex calculation to be made, provide a hypothetical example to walk the reader through the calculation.

35. Consider using charts and tables instead of long, complicated narrative language.

Example

Awkward:

"If it rains less than 6 inches on Sunday, then Party A will pay \$3.00 per share. If, however, it rains at least 6 inches but less than 12 inches on Sunday, then Party A will pay \$4.00 per share. [etc., etc.]"

AMOUNT OF RAIN ON SUNDAY	PAYMENT DUE
Less than 6 inches	\$3.00 per share
At least 6 inches but less than 12 inches	\$4.00 per share
Etc., etc.	etc., etc.

Better:

36. Consider explaining *why* certain contract provisions are included, or why they are drafted in a certain way (for example, because of a compromise between the parties).

37. Items 34 through 36 can be very helpful in litigation. They can provide your trial counsel with

ready-made exhibits as well as raw material for briefs and/or expert testimony.

38. If you can't specify *outcome* in a contract (for example, because the parties don't know what the desired outcome is), consider specifying an agreed *process* for deciding later what the outcome should be. One party to the contract should be responsible for making sure the process happens and does the job it was intended to do. General cooperation clauses or joint responsibility often lead to slipped schedules and finger-pointing.

39. Be careful about evergreen automatic renewals—they can also cause revenue-recognition problems. Consider calendaring the non-renewal notice deadline(s).

40. Date every page of every draft that you send to the other side. Put the date (and even the time) into a running header on every page. Don't use a date code that automatically updates—that likely will make it more difficult to associate printed copies with specific electronic drafts.

Contract Review

41. (Intentionally repeated from #28) Understand what your client's objectives are. Then try to ensure that the proposed contract achieves those objectives.

42. Most-favored-customer clauses can be problematic for a vendor. Avoid them if possible—do you *really* want to have to start cross-checking deals against every other past and future deal to ensure you're not violating an MFC clause?

43. As a vendor, if you must include a most-favored-customer clause, (a) try to limit it to deals of the same size and product configuration and for customers in the same industry, and (b) consider putting the administrative burden onto the customer—rather than you taking on an obligation to report better deals to the customer, instead give the customer the right to have an outside auditor periodically review your other deals (at its expense and under a nondisclosure agreement) and report back to the customer whether the MFC clause comes into play.

44. No-assignment clauses can be problematic for both vendors and customers. So can exclusivity, non-compete, and non-solicit clauses.

45. Licenses and other grants of rights need to be considered *very* carefully, including thinking through retained rights.

Contract Markups

46. Redline all markups with Word revision marks (or equivalent).

47. A corollary to # 40: Date every page of every markup, to help avoid phone conferences where the parties are inadvertently working from different drafts.

48. Use footnotes to explain to your opposite number your reasons for making particular changes—it may help speed up the negotiation. (Don't use Word comments for this, because they have to be tediously deleted one at a time, whereas footnotes can easily be deleted with a single global search-and-replace operation.)

49. If you follow # 48, keep around some representative markups with their explanatory footnotes—they make wonderful training tools to help teach your business to your new lawyers, contract negotiators, and outside counsel.

50. Strongly discourage your business people from keeping private stashes of form contracts on their computer. It's frustrating to find that a sales rep has put together a contract from an outdated form—and even more frustrating to encounter a signed contract, in which you weren't involved, that contains outdated commitments that your company no longer is willing to make.

General Services Administration Contracts

51. A GSA contract is an umbrella agreement between the General Services Administration (GSA) and a vendor, with pre-negotiated prices (or discounts) and agreed terms and conditions, to facilitate purchases by government agencies. The existence of a GSA contract allows government agencies to buy goods/services from the vendor quickly and easily.

52. If your company has a GSA contract, review it.

53. Is the GSA contract up to date, i.e., does it reflect your company's current practices? If not, consider filing an amendment to the business-practices disclosure.

54. Have there been any audits of the GSA contract by the Office of Federal Contract Compliance Programs (OFCCP)?

E-commerce Issues in Traditional Contracting

55. Periodically do an inventory/fresh review of standard contract terms in light of e-commerce issues, including:

- Force majeure (man-made events, hacking,

- September 11th, internet transmission failures);
- Intellectual property (source code access/escrow, background and foreground ownership, non-competes);
 - Privacy (lack of uniform law in the United States; consider also international privacy issues even for transfer of corporate data among offices);
 - Security (encryption, firewalls);
 - Payment (special internet terms such as impressions, unique user fees, referrals; payment security terms and consumer protection laws)
 - Warranties/indemnification (ownership of technology is especially important in internet linking and cobranding; obscenity, privacy, publicity)
 - Choice of law and forum (position on e-commerce issues such as digital signature enforceability; arbitration to head off class action; limit risk and exposure in distant courts)
 - Export controls (erect measure to prevent unauthorized exports; internet transmission increases risks)
 - Signatures/password identification (to ensure enforceability and validity both domestic and international; require “affirmative act”/click by user to assent/reject transaction)
 - Insurance policies (to cover cyberspace and multimedia risk for libel, slander, and defamation; IP infringement; internet security, crime, kidnap and ransom policies, viruses, employee error, theft of credit data; IP loss risks)
 - Internet advertising (federal regulation, including consumer as well as international restrictions; SPAM; unsolicited email)
 - Standard contract terms (simple and reasonable, consistent with off-line sales to further enforceability; material terms prominently disclosed and displayed)
 - Consider downside risk (consider in this economy the downside risks in the contract)
56. Remember that virtually every company has to think about applying e-commerce/internet issues to their day-to-day practices, above and beyond contracting issues:
- Human Resources (internet and email usage; new issues for sexual harassment and discrimination claims, including hostile work environment)
 - Chatrooms (and related liabilities for employee participation)
 - Securities law (internet significantly changes

securities law and insider trading review; and you must exercise caution in applying existing principles to website content, postings (in general and during an offering), hyperlinks, chatrooms, etc.)

Other Contract Issues

57. A fable, a.k.a. “Toedt’s Mack-Truck Rule of Contract Drafting”: Once upon a time there were two companies that negotiated a very important contract. Each company was represented in the negotiations by a smart, experienced executive who understood the business and also understood the other company’s needs. During the discussions, the executives hit it off on a personal level. Under pressure to get the deal done, they agreed that they didn’t need to waste time on picky details, because they were developing a good working relationship and would surely be able to work out any problems that might arise. The executives signed the contract and marched off, in great good spirits, to a celebratory dinner. While crossing the street to the restaurant, they were hit by a truck. Their successors turned out to be idiots who hated each other. Imagine how much fun *they* had in dealing with the picky details that the faithful departed had left out of the contract.

58. Set up a working database for contracts. Include the party’s name, address (and its address for notice if different), dollar amount, termination provisions, whether the contract is assignable, any clauses to watch out for that are different than your company’s standard provisions, etc. [*The contributor of this item reported, “This is the most critical thing that I do and have done, I feel pretty clear about that.”*]

59. Consider setting up a system where Accounting does not pay on any contract—and does not pay commission on any sales contract—until Legal has signed off that it has a copy of the contract.

60. If a contract deals with a third party providing services, be careful about how much of your company’s proprietary information they will have access to and see if you can keep that bounded. If possible have non-compete language included that covers them and anyone they provide similar services to, since you don’t want to pay for a service—such as a design—that they can turn around and sell to your competitor.

61. Your company’s auditors may want to review a representative sales contract for revenue-recognition purposes. Make sure to give them a reasonably representative contract so that they won’t be basing

their opinion on a “one-off” deal.

EMPLOYMENT MATTERS

Recruiting

62. The law governing your recruiting activities may well turn out to be that of the site of employment. Even the choice-of-law clause in your employment contract might not matter.

63. Inquire whether HR has an interview and hiring procedure established. If it doesn't, you can help them generate one and see that it is implemented.

64. Your recruiting practices should take into account the Americans with Disabilities Act. See generally:

- www.eeoc.gov/facts/fs-ada.html (an overview by the Equal Employment Opportunity Commission [EEOC]); and
- www.smartagreements.com/bltopics/Bltopi31.html (a brief overview).

65. Comply with the Fair Credit Reporting Act (FCRA) in doing credit checks on recruits. Two useful (government) websites are:

- FCRA consumer rights: www.ftc.gov/bcp/conline/pubs/credit/freereports.htm; and
- FCRA employer responsibilities: www.ftc.gov/bcp/conline/pubs/buspubs/credempl.htm.

66. Background checks: Determine whether you are *required* to do background checks—some states have laws requiring them for some categories of workers (e.g., health care and child care). See generally:

- www.privacyrights.org/fs/fs16-bck.htm.

67. Review your company's new-employee intake process. HR should have new-employee orientations that cover various legal issues, including sexual harassment policy, use of company equipment and time for viewing pornography, and the handling of proprietary information and material.

68. Periodically sit in on new-hire orientation sessions—find out what your supervisors and HR people are actually telling people.

69. Employment contract form: Review your company's forms and policies periodically (consider calendaring it on a regular basis). Pay particular attention to:

- Invention-assignment clauses,
- Confidentiality clauses, and

- Non-competition, non-solicitation clauses.

70. Change of control contracts—review them. Which executives get them? Is there a policy?

71. Stock options: For general information, see www.nceo.org/options/index.html.

Terminations and Layoffs

72. Age discrimination: Specific age-discrimination disclosures are required for people over 40 in the event of a layoff. See generally:

- www.eeoc.gov/types/age.html.

73. When doing layoffs, check whether the federal “plant closing law” applies, i.e., the Worker Adjustment and Retraining Notification Act (WARN). For a general discussion of WARN, see www.smartagreements.com/bltopics/Bltopi32.html.

74. Severance benefits—make any offered benefits contingent on signing a release (unless the benefits are required by a contract or by law). The EEOC has taken the position, however, that such releases are not binding in age-discrimination cases even if the employee has cashed the check.

75. Foreign employee-termination law is different—it can be very difficult to fire an employee in Europe without paying several months worth of severance.

Exit Interviews

76. See <http://sacramento.bcentral.com/sacramento/stories/1997/08/04/smallb6.html> for an overview of exit interview procedures.

77. Consider putting in your employment contract a requirement that the employee is obligated to participate in an exit interview upon request unless specifically excused. If the employee refuses to participate, and you end up having to sue him for breaching a non-competition clause, it's nice to have an obvious breach of contract to put in front of the judge and/or jury.

78. Exit interviews: Have a friendly witness there to avoid later “he said/she said” controversies.

References for Former Employees

79. Be careful in giving references for former employees. See generally:

- www.nolo.com/article.cfm/objectID/97BCA0D9-5222-4019-8672595419DA6AAE/catID/62C89F2D-3064-4440-BB0EAF183A66D240/111/259/188/ART.

Non-competition Clauses and Inevitable Disclosure Rule

80. For a general discussion of non-competition clauses, see:

- www.lucaslaw.com/NONCOMPETITIONpercent20CLAUSES.htm.

81. In some jurisdictions, non-competes can be hard or (as in California) virtually impossible to enforce. Courts are often reluctant to prevent someone from earning a living and will sometimes bend over backwards to avoid enforcing a noncompete. In the *Earthweb* case, the district judge refused to grant a preliminary injunction even though the departed employee was a senior manager who went to work for a company that seemed to pose a grave competitive threat; the judge brushed off the competitive threat as “speculative.” See *Earthweb, Inc. v. Schlack*, 71 F. Supp. 2d 299 (S.D.N.Y. 1999) (denying preliminary injunction), *aff’d after remand*, 2000 WL 1093320 (2d Cir. May 18, 2000).

82. On the other hand, non-competition clauses are alive and well in many jurisdictions if the clause is reasonable and the factual circumstances are right.

83. The inevitable disclosure doctrine can sometimes be used as a substitute for a non-competition clause, but that can be tough. (This doctrine, followed in some but by no means all jurisdictions, holds that if a departing employee, in his new job, will inevitably make improper use of the former employer’s confidential information, then he can be enjoined from working at the new job.) See *Earthweb, Inc. v. Schlack*, 71 F. Supp. 2d 299 (S.D.N.Y. 1999) (denying preliminary injunction), *aff’d after remand*, 2000 WL 1093320 (2d Cir. May 18, 2000).

84. If you’re not a California company, but one of your former employees goes to work in your state for a California-based competitor, the competitor might try to file a declaratory-judgment action against you in California, claiming that California’s non-compete law applies (in which case you will have a very difficult time). See *Application Group, Inc. v. Hunter Group, Inc.*, 61 Cal. App. 4th 881, 72 Cal. Rptr. 2d 73 (Cal. App. 1st Dist. 1998) (affirming refusal to enforce noncompete clause).

Other Employment Issues

85. Employee handbooks: Be careful not to create implied contracts; where it makes sense to do so,

refer to “guidelines” and not “policies.” Explicitly state that management reserves the right to change the handbook and its guidelines/policies.

- 86. Drug-Free Workplace Act—see generally:
 - <http://www4.law.cornell.edu/uscode/41/ch10.html#PC10> (text of statutory requirements); and
 - www.elaws.dol.gov/asp/index.asp (Justice Department FAQ file, plus an “Advisor”—a simple Web-based decision tree to help companies determine whether they are covered by the Act).
- 87. Family Medical Leave Act—see generally:
 - www.dol.gov/dol/esa/regs/compliance/whd/1421.htm (Labor Dept. guide);
 - www.west.net/~bpbooks/fmla.html;
 - www.unlv.edu/Human_Resources/Benefits/fmlasum.html.
- 88. Immigration—H1B visas—see generally, www.myvisa.com/.

89. Fair Labor Standards Act overtime pay requirements—see generally:

- <http://www.dol.gov/dol/topic/wages/overtimepay.htm> (Labor Dept. guide).

90. Train your management and HR people. Outside counsel will be delighted to help, possibly for free.

91. See if your insurance carrier (especially your employment-practices liability carrier) will give you free HR training for management (such as online training).

92. The company should have an established sexual harassment policy that is included in the employee handbook.

93. Sexual harassment training and equal-opportunity training can be a good idea. They can also be counterproductive if they waste time and/or create a suspicious atmosphere.

94. Don’t set a policy that employees must do X unless you are prepared (a) to follow the policy as a matter of routine, and (b) to deal with the inevitable cases where you find out that someone didn’t do X and now it’s too late to do anything about it. Example: If you want employees to sign a statement that they have read the employee handbook, Murphy’s Law says that the employee who doesn’t sign the statement will be the one whom you want to sue for misappropriation of confidential information....

95. In establishing employment policies, do a cost-benefit analysis—for example, will setting up a hot line for employee complaints provide enough

benefit to justify the (hard and soft) costs?

MARKETING

96. Saying things like “new” on a sales slick may not be a good idea, because printed marketing materials can stay around for years. One way around this is to make sure that marketing materials have a very small “mouseprint” date in the trademarks/copyright section.

97. Consider including, in all marketing materials, a reasonably prominent section that says something like the following: “These specifications are not intended as a warranty. In the interest of product improvement, these specifications may be changed from time to time without notice. Please consult your sales representative for details.”

98. Review as much marketing material as you can. Stay friendly with the marketing/sales/collateral people; tell them you’d like to help with the process earlier. It’s far better to find out about potential problems this way than by having a process server show up in your office with a complaint for copyright infringement or unfair competition.

99. Tell your marketing people about the *Pizza Hut v. Papa John’s* case. Papa John’s, in a “pizza war” with Pizza Hut, ran a series of advertisements containing the slogan, “Better Ingredients. Better Pizza.” Pizza Hut sued for false advertising. The jury found in favor of Pizza Hut, and the court awarded over \$469,000 in damages for corrective advertising. Papa John’s appealed; the Fifth Circuit reversed on grounds too complicated to go into here. *Question*: Was the slogan “Better Ingredients. Better Pizza” so good for Papa John’s as to justify putting the company through the expense and hassle of the pre-trial proceedings, the trial, and the appeal? (Of course, the nationwide publicity generated by the case was no doubt worth something!) See *Pizza Hut, Inc. v. Papa John’s Intern., Inc.*, 80 F. Supp. 2d 600 (N.D. Tex.), *rev’d*, 227 F.3d 489 (5th Cir. 2000), *cert. denied*, 532 U.S. 920 (2001).

100. Avoid superlatives about your product or service that you can’t back up. It might be non-actionable puffery, but even so it might lead to a false-advertising claim by a competitor or by the FTC—and you might be forced to defend the claim and perhaps even to try the case. EXAMPLES: “We are *the* market leader in

X” (which can also raise antitrust issues; see # 191). “Our product does the *best* job of doing X.” “Our product *ensures* that this good thing will happen.”

101. All categorical statements are bad—including this one.

102. Consider selectively using tailored forward-looking-statement language in press releases and other public documents (like websites)—see also # 145 et seq.

INTELLECTUAL PROPERTY

103. Be careful about ownership of IP rights outside the United States. [*The contributor of this item commented*: “Here in the U.S., we expect anything developed by an employee on company time to belong to the company. Not so overseas (as I learned to my great chagrin upon becoming corporate counsel here). In some European countries (Germany and Italy, to name two), employees may have a right to share in the sales revenue generated by their inventions (patented or unpatented). Imagine having to pay 2 to 5 percent of your sales revenue on a major new product to one of your rank-and-file employees, who invented the new gadget on company time, as part of his job, using company resources. The rules are complex and not easily applied, and ignorance of these rules has I’m sure caught many American companies unawares (to their financial detriment). Forewarned is forearmed, as the saying goes.”]

Trade Secrets

104. Know the Three Rules for protecting trade secret information:

- Lock it Up—use reasonable precautions to maintain secrecy;
- Label It—make judicious use of confidentiality legends (but don’t stamp confidential on the lunch menu from the local deli unless you want to be branded as the boy who cried wolf); and
- “Safe Sex”—be careful whom you give confidential information to, and from whom you receive it.

105. Review the company’s standard nondisclosure agreement form(s) (NDAs). Consider making them available on the company intranet.

106. Strongly encourage company personnel to get a signed NDA in hand before disclosing company confidential information.

107. Make it clear that all NDAs that are not on an approved form should be approved by you before being signed.

108. For a brief frequently-asked questions file concerning trade-secret law, see www.lawguru.com/faq/19.html.

Patents

109. If your company becomes aware of a third-party patent that it might infringe, it has a duty to use due care to ensure that it is not infringing any valid claim of the patent. If your company fails to use due care, and later is found to infringe, the infringement is likely to be adjudged “willful” because of the lack of due care—which can mean treble damages and an award of the patent owner’s attorneys’ fees. (That’s counterintuitive, but that’s the way the courts have ruled.)

110. Due care in assessing a third-party patent often (but not always) means obtaining a facially competent *written* opinion of *patent* counsel that the patent claims either are not infringed or are invalid.

111. Make all personnel aware that if an issue comes up concerning a third-party patent, they should *not* make any statement or respond to any third party, but instead they should immediately contact you. In particular, tell your technical people *not* to say, in an email or otherwise, anything like, “well, it sure looks like we infringe this baby!” That will be almost guaranteed to be a key plaintiff’s exhibit, and the jury likely will give it considerable weight.

112. Set up a procedure to notify you before a new or upgraded product is released for sale. Review the prior procedures to avoid on-sale bars, which may cause a loss of potential patent rights. See generally www.northwestern.edu/ttp/investigators/patent_deadlines.html (deadlines for filing a patent application).

113. Review/create a patent disclosure form for inventors to fill out when submitting an idea for patenting. It may be a good idea to establish some kind of patent disclosure review practice.

114. Review/establish a patent incentive program if intellectual property and talented scientists/engineers are important to your company’s business.

115. Ask your patent counsel whether the claims of your company’s patents actually cover what the company is in fact shipping—it’s surprising how often a company’s expensive patent coverage offers

little real-world protection for its products.

116. For general information about patents, see: www.uspto.gov/main/patents.htm.

Copyrights

117. Copyright happens *automatically* when an “original work of authorship” is “fixed in a tangible medium of expression.”

118. To increase your leverage against copyright infringers, file copyright registration applications for key copyrightable works early. If you fail to register a copyright before a particular infringement begins (or, if the work is a published work, within a grace period of three months after publication), you almost surely will lose your right to recover attorneys’ fees and/or “statutory damages” from that particular infringer.

119. Modifying someone else’s copyrighted material can be just as much an infringement as slavishly copying it. (See also # 117.)

120. Warn your software developers not to use open source software without consulting with the legal department—open-source software often comes with a license agreement requiring any derivative software to itself be released for open-source distribution.

121. For a general survey of copyright law, see <http://corporate.findlaw.com/industry/copyrights/index.html>.

Trademarks

122. Before rolling out a new trademark, do appropriate U.S. and foreign clearance searches. Don’t be caught like Microsoft with its Xbox trademark, finding itself having to settle with a tiny company that owned superior rights in the mark. See www.theregister.co.uk/content/50/16640.html for an entertaining account of that particular match-up.

123. Trademark searching:

- www.uspto.gov/main/trademarks.htm—USPTO site for *preliminary* U.S. searches (covers only registered marks and registration applications, not unregistered uses or state registrations); and
- www.thomson-thomson.com/—Thomson & Thomson commercial search agency (you must have an account with them).

124. Once your company is reasonably sure it intends to use a new trademark, file an “intent to use” federal registration application. If you think you know what you’re doing in trademark law (some-

times a dangerous assumption), you can file a registration application yourself at the U.S. Patent and Trademark Office's website, www.uspto.gov/teas/index.html. (Note: intent-to-use applications are generally not assignable without losing their benefits except as part of the transfer of the business.)

125. Don't assume that a U.S. trademark registration application will protect you in foreign countries.

126. Pay attention to the six-month deadline for filing a foreign trademark registration application with the same priority date as your U.S. application.

127. Trademark registrations in multiple countries can get expensive. Get together with the marketing folks to plan out just which trademarks you will attempt to register in which countries (and fight it out with them about whose budget will have to cover it).

128. For a brief overview of some key points of trademark law, see generally <http://corporate.findlaw.com/industry/trademarks/index.html>.

Internet Domain Names

129. Get with Marketing to figure out which domain names you want to register in which countries.

130. Keep in mind that a lot of different new top-level domain names have come online (e.g., .biz, .info, etc.) See generally www.internic.net/faqs/domain-names.html.

IP Enforcement Considerations

131. Figure out what your branding and patent protection strategy really is, and which trademarks and patents you intend to enforce, and against whom.

132. For trademarks: There is nothing more wasteful than an internal legal department that responds *ad hoc* to every potential infringement situation, without having an overall plan of exactly what services or good the brand is intended to cover (including areas of natural expansion).

133. For patents, figure out which patents are core to your product and market share, and which have less core value. Adopt a rigorous plan for enforcement of the former, and rigorously enforce only when the amount you stand to lose (judged by market share, sales, dollars, or any other legitimate criteria) exceeds the cost of enforcement—keeping in mind that by failing to enforce a patent, in some circumstances you may be jeopardizing your right to enforce

it against anyone.

CORPORATE LAW ISSUES

134. If you are the corporate secretary, you should have the books, minutes of board and shareholder meetings, and corporate seal. If you are not the secretary, you should have access to these things.

135. Become familiar with each of the earlier major corporate transactions, qualifications to do business in different states, resolutions, etc.

136. Docket key dates so that you are not blindsided, e.g., by a franchise tax deadline.

SECURITIES LAW ISSUES FOR PUBLIC COMPANIES

137. See www.seclaw.com/secrules.htm for an online version of many securities-law statutes, regulations, and forms.

138. Perform a line-by-line audit of Sarbanes-Oxley requirements, starting with each of the board level requirements, and work down from there.

139. Review and understand the listing requirements of the exchange(s) your company is listed on.

140. Prepare a list of the quarterly and annual certifications that must be delivered by the CEO and CFO (and others) pursuant to SEC and exchange rules.

Insider Trading

141. Review—or draft—your company's written insider-trading policy.

142. Sample insider-trading policy: www.genesismanagers.com/GUM_Cl.nsf/Doc/PolicyIT.html.

143. Require D&Os to obtain your pre-approval before any transactions in company securities. This will help ensure compliance with your insider trading policy, and also allow you to make timely § 16 reports.

144. Get a Power of Attorney from all D&Os enabling § 16 filings on their behalf. In the 2-day filing environment, this can mean the difference between a timely and a late filing.

Regulation FD (prohibiting “selective disclosure”)

145. Text of Regulation FD: www.sec.gov/rules/final/33-7881.htm.

146. Selected SEC interpretations of Regulation FD, in frequently-asked-questions format: www.sec.gov/interp/telephone/phonesupplement4.htm.

Press Releases and Other Public Disclosures

147. Include appropriately tailored, forward-looking-statement language in your press releases and other public disclosures.

148. See www.bassberry.com/resources/corp/012099/5.html for general suggestions about forecasts, projections, and other forward-looking statements.

149. Avoid boilerplate in drafting cautionary language for forward-looking statements. Tailor the cautionary language to be reasonably specific.

150. Familiarize yourself with the kinds of information that might be deemed material for your company or your industry segment.

151. Get familiar with the different judicial views concerning *when* updated material information must be disclosed to the market. See www.bassberry.com/resources/corp/012099/3.html for a compilation of selected cases involving the duty to update and the duty to correct prior statements.

152. See nos. 100-101 about the dangers of superlatives. If your press release (or other public document) says that “Our product *ensures* that this good thing will happen,” someone might later try to enforce that as an express warranty.

153. Form a disclosure committee, with a written charter, and make sure it reviews or has oversight of all public disclosures made by the company. Make sure there are minutes of the disclosure committee meetings, as these will likely form part of your company-level controls for SOX 404 purposes.

154. Have a policy strictly limiting the persons who can speak to the public on behalf of the company. Ideally just the CEO, CFO, and head of Investor Relations should be the spokespersons. Train each of these people on Reg FD and Reg G.

155. Have the disclosure committee approve an “inadvertent disclosure” policy addressing the situation where your CEO or CFO selectively discloses material information. Have on hand a form of 8-K you can quickly dust off and file if necessary.

156. Determine whether you are the company’s designated contact with the media for public crises. If so, cultivate a relationship with the local business reporters. It’ll pay off in spades when a crisis hits.

EXCHANGE ACT REPORTING—FILING OF FORMS 10-K, 10-Q, 8-K, ETC.

157. SEC filings must be done on a timely basis, otherwise there can be repercussions. If you are not an expert in this area, make sure that an SEC lawyer is keeping track of dates and gives you ample notification of an impending filing date. Calendar the dates for:

- Quarterly 10-Q filings,
- Annual 10-K filing,
- Annual report to shareholders, and
- Annual shareholder meeting and its proxy statement.

158. *Schedule* sufficient blocks of time to work on the 10-K/10-Q/proxy statement, keeping in mind the new 30-day time limits for 10-Qs.

159. Set up detailed assignment lists for the work necessary for the 10-K/10-Q/proxy statement.

160. Periodically review the risk factors in your 10-K and 10-Q reports; update them as appropriate.

161. Remind each new member of the board of directors, and each new § 16 officer, to file a Form 3 report within *10 days* after he or she moves into the new position. See www.sec.gov/about/forms/form3.pdf for the SEC’s instructions.

162. Set up a process with board members and section 16 officers and their brokers to ensure you know of trades in time to help file Form 4 reports. See www.sec.gov/about/forms/form4.pdf for the SEC’s instructions.

163. Send out annual reminders to board members and section-16 officers to file Form 5 reports. See www.sec.gov/about/forms/form5.pdf for the SEC’s instructions.

164. Set up an internal process for handling requests by pre-IPO investors to sell their restricted stock under Rule 144.

Regulation G

165. Make sure you read and understand Regulation G. Know whether your company uses any non-GAAP financial measures. If so, know what the most comparable U.S. GAAP measures are and how they reconcile to each other.

166. Make sure you know what non-GAAP financial measures are publicly referred to by the CEO, CFO, etc. outside of written filings (e.g., analyst calls, investor conferences, one-on-one meetings). Make sure the reconciliation of all such

non-GAAP financial measures is properly publicly disclosed.

LITIGATION & OTHER DISPUTES

167. Don't let demand letters sit around unanswered. At a minimum, buy time by asking for more time to respond. There's nothing worse than finding yourself in the middle of a lawsuit because someone forgot to get back to the complainant in a timely manner—try explaining *that* to the CEO. It also doesn't look good to the judge (and the jury, if it comes to that).

168. Document retention: If litigation is threatened, contact the IT department about not destroying/recycling email backup tapes. Notify involved people not to destroy potentially relevant documents.

169. Maintain channels of communication with competitors' legal departments. Consider designating one person—preferably someone other than the general counsel—as a liaison to each competitor's legal department.

170. ADR: Know the differences between arbitration vs. mediation vs. early neutral evaluation.

171. Using standard AAA or similar arbitration clauses can sometimes result in unanticipated and very painful results. Where practicable, a better approach is to craft specific arbitration rules to attach to the contract to achieve the desired objectives, such as limited or broad discovery depending on what benefits the company the most; timelines to avoid gamesmanship and delays; venue for hearings and depositions.

172. Before going down the litigation path, make certain that you become well aware of what the costs of the litigation will be. Make certain that upper management is well aware of and approves the cost. Make certain that they know how it will affect your budget and the bottom line. Obviously, you have little control over the initiation of a suit as a defendant, but you can negotiate. When you are the plaintiff, you have control of whether or not you pull the trigger.

173. If you are inexperienced with litigation or a specific type of litigation, make sure that you select very experienced lawyers to work with you. Make sure that you agree in advance about costs, fees, and payments thereof.

174. Many trials are now like a *60 Minutes* documentary. During the pretrial phase, the “producers” (i.e., the lawyers) collect hours of potentially useful video footage (depositions and documents). Then for the trial, they pick and choose snippets to show the audience (the jury).

175. In a lawsuit, the plaintiff always “gets up to bat” first. By the time the defendant gets its turn, the plaintiff may well be 10 runs ahead with the jury. And unlike in baseball, the plaintiff not only bats first, but also bats last.

176. In a lawsuit, truth is the goal—but in the end, admissible evidence is what matters.

177. Don't fall in love with the other side's inconsequential problem facts—e.g., the fact that the other side did something wrong, but it was a minor transgression—because jurors might well ignore those problem facts.

178. On the other hand, don't ever discount your own supposedly inconsequential problem facts, because jurors might use them as an excuse to discount everything you say. (No one ever said life was fair.)

179. Jurors usually have the last word on factual matters. Suppose that five bishops swear that the light was green and only one homeless person says the light was red. If the jury decides that the homeless person was more credible, and there's no evidence of jury bias or other reason to grant a new trial, then the light was indeed red—period, paragraph, end of discussion.

180. Just because you're right doesn't mean you'll win.

181. Some judges simply won't grant summary judgment, no matter how compelling the motion—they figure they're much less likely to get reversed on appeal if they let the case go to the jury.

182. A plaintiff will nearly always try to ascribe evil motives to a defendant—and if there's *any* evidence to that effect, it likely will weigh heavily in the jury's mind.

183. On the other hand, a defendant who tries to ascribe evil motives to a plaintiff is playing a dangerous game—it may backfire with the jury. (Again, no one ever said life was fair.)

184. Juries can have a tendency to believe “the defendant must be guilty of something, otherwise they wouldn't have us here.”

185. No matter what the outcome, litigation

invariably soaks up lots of management bandwidth.

186. Some litigation is unavoidable, and some litigation is worthwhile from a business point of view. The art is knowing when to fight, when to settle, when to appeal.

187. Depositions are not fun for executives—they are a huge time sink and can lead to embarrassing video clips being shown at trial (ask Bill Gates).

188. Try to convince your executive that, even though she may be smarter, have better values, and be a better person than the lawyer on the other side—or the jury, or the judge—she must put those facts out of her mind when testifying.

189. Delay seldom helps defendants as much as it increases expenses.

EMAILS

190. Be careful what you put into an email. Don't assume that everyone who reads your email will understand the context.

191. Remember that self-damaging emails are likely to be taken as gospel in litigation, no matter how erroneous or how out of context they are.

192. Emails about potential M&A transactions may have to be filed for review by the Justice Department as part of a Hart-Scott-Rodino Act submission, and perhaps also with the EU competition authorities (remember the aborted GE-Honeywell merger, sunk by the EU's refusal to approve it). So don't say in an exuberant email, "if we can buy this company we will *own* the market!"

193. Clean out your email regularly, if for no other reason than to avoid the enormous expense of having to review it for possible document production someday.

194. Establish an email retention policy—but don't raise the bar too high (it can look worse for a company to have a policy but not follow it, than to have no policy at all).

195. Try to get buy-in throughout the organization for whatever email policy you establish.

196. Recycle (overwrite) email backup tapes frequently. In a litigation document production, you don't want your IT people to have to be restoring and searching months worth of backup tapes with essentially the same information on it. (But be extremely careful about recycling email backup

tapes if litigation begins, or is threatened—you could be accused of spoliation of evidence.)

197. If you send an email to—or if you are—a government official or employee, consider whether the email might be deemed a "public document" that could be disclosed under the FOIA.

198. Sometimes you have to "just say no" to email—the old-fashioned way of picking up the phone or walking down the hall may be more effective.

RISK MANAGEMENT

199. Find out who the risk-management person is—make sure you and the CEO are on the same page about whether *you* are that person.

200. Learn your company's level of risk tolerance. Almost all companies are willing to accept defined risks, if the cost to avoid all risks is too high (as it almost always is).

201. Insurance policies—review their coverage levels and exclusions. Can claims be made during a renewal term for events that occurred in a prior term?

202. Get to know your company's outside insurance rep. Consider asking for a briefing on existing insurance policies and their coverage limits/exclusions.

203. When does the insurance coverage expire? Who in your company is responsible for renewing it? (*Example: The insurance policies for one author's company reached their expiration dates. Three days later, the city was hit by massive, devastating flooding. The company was forced completely out of its building for nearly three weeks by severe flood damage to the building's electrical and phone systems in the basement. Fortunately, the insurance policies had been timely renewed.*)

204. Even if it's not formally your responsibility, consider calendaring the insurance-policy expiration date anyway, and following up to make sure it gets done.

205. Explore available coverage through ACC's members or other industry groups or friends in other companies, to find out what coverage they have negotiated that is not generally covered in the standard policies (or ask other brokers to tell you what they could do to improve your coverage). [*The contributor*

of this item remarked: “I have often been surprised at how much coverage is available for unusual (and sometimes common) problems without additional cost or with very nominal increases in premiums. In many cases, you would instinctively think that various risks are covered when the standard policy doesn’t cover them. The one that comes to mind (but I don’t recall the details) related to what is covered in the case of water damage, either because of a broken pipe or as a result of the sprinklers going off due to a fire. I was shocked at what was not covered and found out from one of our insurance experts that the added coverage could be obtained for free. Another example is insurance to cover breaches in reps and warranties in an acquisition context. I was again surprised at how reasonable the cost of this coverage was.”]

206. Disaster plan—does your company have one? Does the Legal Department?

- See www.disasterplan.com/yellowpages/Displan.html for an overview of things to think about for disaster-recovery planning.
- See www.disasterplan.com/ to see links to some sample disaster-recovery plans.

207. How often does your company do rehearsals for its disaster plan?

208. Make a binder with key corporate documents for easy reference. Possibilities: articles of incorporation; by-laws; most recent 10-K/proxy statement; insurance policies; office leases. (Have an extra copy available off-site for disaster-recovery purposes.)

209. Have an electronic set of key forms available off-site (e.g., on a notebook computer).

210. Some legal departments burn weekly CD copies of the entire legal section of the server.

211. If your company serves alcohol at a company event, make sure that an email is sent prior to the event that free cab rides home are available upon request. Repeat the announcement at the event.

ADMINISTERING YOUR DEPARTMENT

General Management Tips

212. Try not to be just an in-box lawyer. Have at least one initiative going that will provide a long-term benefit for your company or division. Schedule regular time periods for working on it.

213. Schedule specific time to work on specific

projects, otherwise your day will be nibbled away.

214. Manage projects by using detailed assignment lists, with assigned personnel and target dates.

215. Push for a paperless office—if nothing else, scan in key hard-copy documents into Adobe PDF files.

216. *Immediately* investigate how to use technology (intranet, etc.) to announce your presence and provide information for business processes.

217. Make information and forms available to the employees online to save yourself some time.

218. Reel in all templates, self-service document assembly tools, and any guides to use, and check for accuracy, updating, and appropriate use.

219. Don’t be afraid to build your domain—if there is a gap in management that you can competently fill and that fits in with your management of the legal function, do it.

220. Remember that you don’t get what you expect—you get what you inspect. [*Heard from Rear Admiral Floyd H. “Hoss” Miller, USN, ca. 1978.*]

221. Remember the 80-20 rule: 80 percent of the revenue comes from 20 percent of the customers; 80 percent of the problems come from 20 percent of the employees; and so on. This is also known as the Pareto Principle, about which see www.4hb.com/wisdom/08jcparetoprinciple.html.

222. When you accept a new position as general counsel, you may know from day one precisely what you want to do with your legal department. It is a good thing to make a few changes early on, but reassure your staff that you want to get to know everyone and become familiar with the processes and procedures before instituting any major changes. This will allow your staff to show you what they have, will put their minds at ease, and will pave the way for successful implementation when you finally decide to launch your more significant initiatives.

223. Have a mission! Create a mission statement that guides the legal department’s activities. Review it periodically and ask yourself, are you and your colleagues spending your time in line with your stated mission? It can be as simple as: The Legal Department’s mission is to efficiently and effectively administer the legal affairs of the Company by internally providing professional, timely, and useful legal advice and services, arranging and actively managing the services of outside counsel as needed; to minimize liability exposure by recommending and

implementing appropriate policies, practices, and procedures; and to administer such legal affairs in the most cost-efficient manner reasonable so as to contribute to the Companywide team effort to maximize the Company's return to its stockholders.

224. Focus on achieving two or three high-profile accomplishments each year. The day-to-day projects, although important, may be viewed as same old, same old. The big projects you complete give the legal department high visibility and recognition with senior management and the board of directors.

225. Managing a department is very different from outside practice. Budgetary responsibility, performance appraisals, and career development counseling are all part of managing a team.

Budgeting

226. Get familiar with your company's budgeting process—you may have to fight for your own budget. Learn what the budget "loads" are for each person in your department, and what expenses *your* budget will be expected to cover (cell phones, etc.).

227. Understand your budget constraints and make every effort to work within them, as your CEO will grade you based on your ability to project quarterly expenses and to meet those projections. Brownie points are not gained by having a million dollar surplus in your budget, nor are they gained for not meeting quarterly objectives. Performance within budget is key.

228. Since you do not have an unlimited budget, prioritize your efforts to be consistent with the business and your budget.

CORPORATE DYNAMICS AND RELATED ISSUES

Dealing with Management

229. Make friends and develop allies.

230. Think—and ask questions—like a CEO, but remember that you're not.

231. Establish a weekly meeting with the CEO (no more than an hour) to give a synopsis of what you're doing, get an idea what is on his mind for the company, and try to think of ideas and actions to help him with what he is trying to do. It's a good idea to have a similar routine with other key executives, to foster communication and develop a team

approach to the business.

232. Identify your principal internal clients and make every effort to respond quickly and accurately.

233. Be conservative in your opinions as a rule, but be willing to identify other options along with associated risks.

234. Remember that business people want problem solving rather than problem identification. If at all possible, do not tell them that they cannot do something; instead, tell them how to do what they want to do. (But also remember that depending on the circumstances, ethics and common sense may require that you do something different.)

235. Go to lunch! Use your lunchtime to your business advantage. As often as you can, go to lunch with managers from marketing, sales, IT, finance, tax, and other operating units. Get to know them as people, and let them know about you. Over lunch you can learn much more about their problems as they see them. The best attorney-client relationships are built on trust. This is a simple and pleasant way to achieve that goal. Taking lunch at your desk every day is a missed opportunity.

236. Meet at least once in person with every attorney who provides advice directly to your company. Face-to-face meetings improve communications tremendously. When traveling, line up get-acquainted meetings with outside counsel who are located in cities you will be visiting.

237. Don't get excessively involved emotionally with the company—you want to be able to provide legal advice and judgment from an independent perspective. Try to cultivate a mindset of "lucid detachment" (John Mortimer's phrase).

238. Try to stay neutral in corporate power struggles. But realize there may be times when you have no choice but to back one horse or another—and then live with the consequences.

239. You are going to lose more battles *within your company* than you are going to win. Pick your battles wisely and be gracious in both victory and defeat. Your good communication and listening skills will cement successful long-term relationships within the company.

240. Make nice to *everyone*. It's a great information source.

241. Whenever possible, make your colleagues in the business units look good. When you do this, the legal department by default looks good too. You

will find that you will become better informed, will be accepted into their company, and will enjoy a smoother work flow.

242. Don't gossip; you'll get more information through informal channels if people think that you keep your mouth shut (but remember that fiduciary duty may compel you to disclose some things that you are told).

243. Create a community service day as a means for building relationships and understanding among the legal department. This will build employee loyalty and will increase the company's standing in the community. People tend to purchase products and services from companies who brand themselves as community conscious.

Employees' Personal Legal Problems

244. Avoid giving informal legal advice to co-workers, even those whom you regard as friends. You will be asked for advice about many subjects that affect your co-workers as individuals (divorces, home purchases, criminal matters, bankruptcy, etc.). It's hard to say no, but you should do so. It's best to affirmatively let the person know you cannot give them advice. Remember that today's co-worker could turn out to be tomorrow's malpractice plaintiff if something goes wrong.

245. Keep a list of lawyers to whom you can refer employees who have legal issues with wills, real estate, car purchases, divorces, criminal matters, traffic tickets, drunk-driving charges, etc.

246. Conflicts: Err on the side of making it clear to an employee that you are the company's lawyer, not the employee's lawyer. This is especially important when dealing with, e.g., a departing employee who wants to know about his confidentiality or non-competition obligations.

Communicating Plainly

247. Keep your legal advice short when speaking with senior executives. Use your time to describe the business impact of that advice and how it can be mitigated. They don't have time to learn the law.

248. Try to speak in English when giving advice.

249. Write your documents as if you were writing a letter to your sisters. (Adapted from Warren Buffett's introduction to *A Plain English Handbook*, www.sec.gov/pdf/handbook.pdf).

250. As a rule, a company can tolerate mistakes,

but not surprises. Therefore, we need to communicate, communicate, communicate. If you make a mistake, admit it and learn from it. Don't dwell on or continually revisit decisions.

USING OUTSIDE COUNSEL

251. At least initially, the lawyers who had been doing the company's legal work will know more about the company and its legal affairs than you. Use them to help you get up to speed.

252. An in-house attorney needs to know his or her limitations. It's tough, for example, to be an expert in insurance law AND intellectual property. You need to know when to reach out for expert advice when confronted with an issue.

253. Remember that when you start as a new general counsel, your company's outside counsel may have some apprehension, in particular a fear of losing business.

254. Try to figure out which legal issues are core to the business and should be handled by in-house counsel, and which are best handled by outside counsel.

255. Remember that you are now the client. Be active in knowing the competency of the partners and associates assigned to your individual matters.

256. Act quickly when you are not satisfied with the work of a particular attorney.

257. Get to know your options with other law firms—sometimes your loyalty to a particular firm will not serve the company's interests.

258. If one of your attorneys changes firms, be sure that you are informed and that you make the decisions about what happens to your files.

259. Watch the bills. Some people are uncomfortable talking about bills, but it is not difficult. You may have been very careful in your billing practices when you were in a law firm, but not everyone is. Ask questions and make sure you are satisfied with the answers.

260. When hiring an outside lawyer, factor in the amount of time you will need to invest in educating him. This should be factored into the cost associated with purchasing the advice.

261. Since you will be accountable for the decisions made by outside counsel, make sure that you are consulted as often as you feel necessary.

262. Develop good working relations with the best law firms and specialist lawyers. (I have found that it is better to have lawyers nearby rather than far away.) Time here is well spent as they will generally make extra efforts the better they know, like, and respect you. I recommend that you establish these types of relationships with the senior partners of the respective law firms as they are most likely to be there when you need them and can garner the necessary resources quickly if needed. Ask that they be the billing lawyer so that they are in control of all matters.

263. Initial items to consider in using outside counsel:

- Discuss need for outside counsel with the business people;
- Identify needed skills, governmental contacts, location, firm size, fees, and sophistication; and
- Determine if costs can be passed on to another party or insurance company.

264. Things to consider in selecting outside counsel:

- Ask coworkers for recommendations;
- Search internal database (if available);
- Ask professionals (lawyers, accountants, investment bankers) for recommendations;
- Search external databases (Westlaw, Lexis) to identify lawyers with necessary skills;
- Consider whether a beauty contest would be useful;
- Consider whether to establish or strengthen a strategic relationship with a law firm;
- Have counsel run conflicts check and perform internal conflicts check; and
- Interview the top two or three candidates.

265. Develop a mandate for the law firm:

- Establish outside counsel's expected role;
- Send a retention letter;
- Agree upon the fee and expense structure;
- Develop a budget where possible, and monitor on-going expenses; and
- Develop a project list and timetable.

266. Evaluate the law firm's work:

- Was the lawyer responsive?
- Were the results accomplished in a timely, cost-sensitive manner?
- Was the work product of sufficient quality for the project?
- Were invoices provided in a timely manner?
- Was the working relationship satisfactory?

- Did outside counsel work well with the client? and
- Conduct a post-closing feedback session.

CORPORATE SECRETARY/BOARD-RELATIONS MANAGEMENT

Play an Active Role, Anticipate Needs, and Be Knowledgeable

267. Work to create an invaluable and trusted role for yourself with the Board. The best way to do this is by making yourself useful to each of them at every turn.

268. Access to board meetings is paramount to ensure decisions are based upon all relevant information.

269. Hone your diplomacy skills, and be sensitive to different needs of different directors—it's not enough just to be a smart lawyer. Learn how each director wants to receive information (including their pre- and post-meeting travel plans), their differing need for reminders (make certain to keep their assistants informed), and how best to prepare them before the meeting. Pre-meeting phone calls on an informal basis—which may not be as effectively provided in a more formal board setting—may make all the difference in obtaining a smooth and favorable outcome at a board meeting.

270. Create a role that complements and supports that of the CEO, to foster key executive support of your role with the Board. In order to gain the CEO's trust to "leave you alone" with the Board, the CEO will need to trust you to support his initiatives, understand the issues, and have the "senior" skills to work with the Board. There's no magic bullet for this, just a lot of consistent and diplomatic effort, with no margin for error. Avoid at all costs any appearance that you are in competition with the CEO for the Board's favor. Watch out for the CEO's interests (including executive compensation) and be the CEO's champion with the Board whenever possible.

271. Keep everything you do as simple as possible. This applies to everything about the Board meeting: the process (the agenda, the format of the board book) as well as the substance (avoid legalistic language). Find a formula that works, and stick to it. The format of the meeting preparation and

Board briefing books should be simple, understandable, and taken for granted, so that the Board can concentrate on the substance. Familiarity in Board meetings is a good thing (leave the creativity for the actual presentations and management performance).

272. Make certain that the Board feels procedurally and substantively comfortable (particularly in the post-Enron and current Sarbanes-Oxley compliance environment) in taking the action management is supporting. This may entail providing “Notes to Board” and other summary “Cliff Notes” as to background/history of complicated matters presented to the Board.

273. Look at the materials from a Board member’s perspective, and anticipate the necessary evaluative information without them needing to ask for it.

274. Bring additional information to the Board room that might be required to respond to the next level of questions (e.g., the relevant agreement, statutory reference, information or other documents). This instills confidence in the Board that you’ve thought through the issues, even if you actually use the backup material only a portion of the time. (The Board is less likely to subject you to intensive follow-on questions once this level of confidence is established.)

Be Prepared

275. “No surprises” for the Board. By the time of the actual Board meeting, you have done your job if management knows where each director stands on every significant issue. Do not spring new issues on the Board at the meeting, if at all possible; no one likes surprises and nowhere is this more the case than in the Board setting.

276. If you are relying on past Board actions or past years’ precedents, summarize those facts in the Board book—your directors will appreciate not having to excavate for the information or admit a lack of immediate recollection.

277. Strive for “completed staff work.” Anticipate questions, facts, and analysis that Board might request. If materials in the Board briefing book are necessarily complex or assume background information, try to include additional information in an “Executive Summary” or “Notes to the Board” to facilitate their review.

278. Aspire to operate error-free at a fast pace. (Of course, that may sound like the Little League

coach’s shouted advice to the young batter at the plate, “Be a hitter!”—how??) You will be asked to provide legal advice and make procedural judgment calls on the spot. The more you are prepared and can simplify the ministerial aspects of your in-meeting secretarial responsibilities (see advice below on preparing draft minutes before the meeting), the more prepared and able you will be to address the different issues raised at the meeting.

279. Try to keep abreast of possible hot topics and trends that board members may encounter in their own companies or on other boards. Focus particular attention on issues of director liability, D&O insurance, director compensation plans (including § 16 issues), and changes in applicable tax law. The Board members will appreciate it.

280. Anticipate when third party assistance is needed, whether to provide additional protection to Board (outside counsel); provide independent perspective on management issues (e.g., compensation); or provide independent analysis (e.g., investment bankers, outside auditors).

281. Include a housekeeping items time on each Board-meeting agenda for approval of committee minutes, signatures for unanimous written consents, and similar matters. (Important SEC filings such as the 10-K usually rate their own agenda item, for optics purposes if nothing else.) One strategy: Include at the beginning of the Board agenda a brief opening item for approvals of minutes and explanations of actions to circulate during the meeting and breaks. Board members appreciate taking care of these ministerial matters at the Board meeting and it’s a great way to keep your records complete.

Address Legal Concerns Without Over-Lawyering

282. Be flexible and think up simpler ways to accomplish goals. Example: In confirming information in (typically lengthy) Director and Officer Questionnaires, have Directors confirm the accuracy and completeness of their personal information, but develop a shorthand for the Board members to confirm that they are not aware of any information additional to that already proffered by management (e.g., by reference to disclosure made in another document—draft proxy or registration statement—as consistent with their information).

283. Try to take care of legal concerns and necessary procedures in the least-intrusive method

possible, so that it appears effortless to the Board. Example: Send Board members monthly § 16 reporting reminders, and file their forms for them.

Establish a Board Routine that Works

284. Drive the process by preparing the CEO and management for anticipated issues at the meeting.

285. Prepare a draft agenda and draft board materials.

286. Keep track of open action items from prior meetings.

287. Periodically review prior years' minutes for what actions were taken when with respect to certain repeat matters (incentive compensation plans, registration statements, proxy statement, and annual report).

288. Keep a tickler as to future approvals needed.

289. Have a Board agenda file into which you can put reminders, notes, etc., as they come up in day-to-day business.

290. Information and data that are important to the Board's understanding of the business should be distributed in writing to the Board before the Board meets.

291. Generally, materials should be distributed in advance so that Board meeting time may be most productive. Sensitive or "in process" subject matters may be discussed at the meeting without written materials being distributed in advance.

292. Assist in structuring the Board in a manner that works for your company in terms of Board size, meeting frequency, and standing committees.

Keep the Board Educated and Informed

293. Prepare a Board Reference Manual of useful information: corporate data sheet, committee charters, corporate bylaws and certificate of incorporation, board and management information/addresses. (This manual is also invaluable for the legal department, finance, and others with a need for detailed information for reporting purposes.)

294. Keep informed on Director trends, concerns, and considerations, and make relevant information available to the Board as appropriate. In particular, look for:

- National Association of Corporate Directors (NACD) publications, including Blue Ribbon Commission Reports and Directors Monthly. Consider an individual or Board membership.

- Current SEC review issues and areas of potential Director liability.

Be Detail-Oriented, Dependable, and Well-Organized

295. Assist Board committees in their meetings, by coordinating meetings, and giving secretarial assistance. Even if a Board member is the official secretary of the committee, offer to assist in preparing minutes for his approval. Be careful, however, not to seem like you are trying to force your way into the Board process.

296. Provide Board committees necessary legal information and research to address the task on hand, e.g. executive and director compensation trends and comparables (compensation committee); board size and governance trends (nominating committee); investment banker advice and financial analysis (audit or independent committee).

297. Strive to ensure all legal obligations are made as effortless (and error-free) as possible for directors, e.g., § 16 filings.

298. Check whether directors are covered for potential liability, including sufficient levels and scope of D&O insurance and indemnification agreements.

Strike the Correct Balance in the Board Meetings

299. Above all, have understated control of all formal, required procedures and approvals at Board meeting.

300. A unanimous written consent for board approval should only be used when the acceptability of the proposal is so obvious that no board member will feel that the issue merits discussion.

301. Pre-plan for issues that might arise at the meeting, to improve your ability to provide advice on the spot and to free you up for a greater participatory role.

302. Draft as much of the anticipated Board minutes as you can before the meeting to allow yourself the ability to focus on more difficult issues, be more active, and be viewed at the meeting as more of an executive participant.

Always Follow Up on Board Questions and Requests

303. Maintain an "action item" list of requests made by Board members during the Board meeting that require follow up. Circulate the list immediately following the Board meeting to executives who

would be responsible for addressing the Board task. Recirculate the list before the next Board meeting as a reminder.

COMPLIANCE PROGRAMS

304. Target the riskiest compliance areas for your company—you will rarely have the luxury of time, resources, or management patience to address the “nice to haves.”

305. For a domestic company, depending on the nature of your business, that may be securities law, antitrust, product liability, environmental risks, and/or employment and benefits.

306. For an international company, add to the above the Foreign Corrupt Practices Act, OFAC sanctions, and export law.

307. Set up your program with the three P’s of compliance in mind: Paper, People, Process. “Best Practices” to maximize compliance and protection from liability would have a clear policy statement and written guidelines; effective compliance procedures with appropriate review/audits; high-level oversight and accountability; visible senior-level commitment; a compliance ethic that is supported both in word as well as deed by management; and appropriate, customized training to facilitate compliance.

308. It’s far worse to have a strong policy and then not comply with it than it is to have a weak policy or even no policy at all.

309. Provide meaningful real world examples—Enron, Arthur Andersen—as well as the risks of failing to follow a meaningful compliance program (e.g., loss of corporate export privileges, jail sentences). The biggest challenge is to strike the right balance between legal compliance and meeting real life business limitations (time, money, patience for the more subtle legal nuances). A lawyer’s failure to strike a realistic, common-sense balance will be the quickest route to losing credibility in a compliance program.

310. Do not expect compliance to be easy, or painted in black and white. Decisions are usually in the gray areas, where business needs and risks are balanced. Rarely will counsel be in the position of saying “you cannot do X.”

311. Get buy-in from the top down. Without the CEO’s buy-in—his statements and actions, including

budget funding—you’re fighting an uphill battle.

312. Strive to instill both a healthy respect for and healthy fear of the legal department to drive compliance efforts. The business people must both respect your judgments and fear the consequences of non-compliance (namely, the genuine ire of the CEO).

313. Identify key gatekeepers for the compliance function who have the most significant breadth of responsibility and understanding of compliance, e.g., legal, finance, human resources. Have one of them appointed as the “owner” of the program by the CEO, responsible for its performance. One very useful training tool is to analogize legal department approval to an insurance policy.

314. Keep your policies as short and simple as possible. The lawyers and other gatekeepers need to understand the details. Translate the legal theory into practice for your company.

315. Keep abreast of how your company measures up to recent hot buttons of liability or government agency scrutiny.

316. Use outside counsel and ACC to leverage learning for compliance programs; chances are it’s been done before and you can avail yourself of existing learning on best practices.

317. ACC’s website at www.acca.com is a great resource for model policies and ideas. (No, this is not a paid advertisement.)

318. Be responsive and as flexible as possible: do not create a bottleneck or impose unrealistic compliance standards. If you do, people will find a way around you despite the (theoretical) consequences.

INTERNATIONAL BUSINESS

319. Adjust yourself to the contrasting risk profile and practice of law between domestic and international transactions—both the similarities and differences.

320. Periodically take inventory of the way you do business in the various jurisdictions and the issues raised in each. Typical areas to review include:

- Foreign Corrupt Practices Act (including finance recordkeeping and payment practices)
- Export compliance
- Patent, trademark, domain name protections
- Corporate presence and subsidiary, office structure
- Corporate records and housekeeping generally

321. Consider using branch offices of U.S. law firms, who understand both requirements on U.S. companies as well as local law, particularly in the most different, legally sensitive, or difficult of jurisdictions, e.g., China.

322. Consider using a firm that can act as a “general counsel” for a region due to multiple language skills, offices in multiple countries, etc.

323. Good identification and use of international counsel, particularly where language and legal differences are most significant, can be of tremendous benefit to in-house counsel in minimizing risk and required in-house oversight.

324. Recognize that, particularly for smaller transactions, some risks and uncertainties as to application of U.S. terms in foreign jurisdictions may be necessary. This is one of the most difficult areas of in-house practice: honing your skills to know when to spend the time and outside counsel fees to research a question and when the circumstances do not warrant it (and the risks are reasonable).

325. Know the legal aspects of the big items in each country that can multiply your risk in ways that you wouldn’t imagine in the United States. For example, can you effectively exclude consequential damages in Germany? Are you subject to consumer protection statutes in France?

326. Spend some time to learn the relevant culture and business practices/styles in each jurisdiction in which you do business, and make it a point to go out of your way to spend time with them in their country whenever possible.

327. Do not expect to see U.S.-style lawyering in a contract in many jurisdictions, either because of the language differences or role of attorneys in that culture, e.g., Japan.

328. Even a basic knowledge of the expectations and protocol of the other culture may result in significant benefits to the success of the relationship and the efficacy of the transaction.

329. Never underestimate the need for face time to build trust and relationship with your own international offices and transaction parties. While this is true domestically as well, it is critical internationally, particularly to gauge the culture and language barriers.

330. Recognize that international laws (e.g., anti-trust, takeover codes, and privacy laws) are having increasingly independent impact on U.S.

companies with international operations. This is especially true of the EU (remember the busted GE—Honeywell merger).

GET ORGANIZED: FILING SYSTEM AND RECORD RETENTION

331. A clean, clear, and crisp filing system and retention policy is worth its weight in gold when you have to find a document to answer your CEO’s question, respond to a legal claim, or answer a discovery request. Take advantage of the Enron and Andersen situations to convince the business people to address this need.

332. Non-lawyers seldom understand how valuable a top-notch legal assistant/legal secretary can be in promoting the success of any document-driven endeavor (including filing, litigation, discovery).

333. A filing system should be logical and organized, and understandable by anyone accessing the system. A filing system can be either centralized or decentralized (with centralized access to the document list).

334. Review and reconcile your email retention policy with your existing retention policy. Do not be surprised if you don’t have either or both, or that they aren’t reconcilable (after all, different groups are probably responsible for each).

335. Make sure that the IT department is actually following the written document-retention policy, or make them revise the policy to fit reality.

PROFESSIONAL & PERSONAL DEVELOPMENT

CLE

336. Attend legal seminars and conferences to maintain and develop your skills. There’s no substitute for being legally competent. As a general counsel, you must know something about all the legal areas that affect your company’s business.

337. Join ACC and participate in local chapter meetings.

338. Read the *ACC Docket*—it contains some of the best practical articles around.

339. Subscribe to appropriate legal newsletters for your areas of practice/expertise (BNA, CCH, etc.). Make the time to read them.

Stress Management

340. Stress management can be a big issue. One contributor says, “There is really no way to explain how stressful it can be to go from being an outside ‘white tower’ lawyer to being on the inside.”

341. Learn about ergonomics. Find out what your health insurance will cover, then *do it*.

342. Do not worry about being right all the time. Trust your instincts. You will sleep better and be more valuable to the company.

Managing Your Career—and Your Life

343. If the company is not going to give you the salary that you want (which it probably won’t), try to get (a) extra vacation time or (b) an employment contract or (c) (you be creative here).

344. Negotiate your own employment contract and change-of-control provisions. Search for examples of executive employment contracts at www.10kwizard.com.

345. Keep a running list of accomplishments in your current job. You can put it to good use at compensation-review time—and then use it to update your résumé when the time comes.

346. Speak up if you “win” something. If you settle a case for \$100,000 when you had authority to settle for \$200,000, let that be known; laugh and say what a shame it is that you don’t get a commission. Make people think that you are making money for the company in some way—because otherwise some will see you as Evil Legal bleeding their money away.

347. However you set up your work schedule, that’s what your colleagues will come to expect. So when you try to break free to leave at a “reasonable” hour (as in, 8:00-6:00 without lunch), if that isn’t the pattern you’ve trained your colleagues to expect, they will think you are sneaking out early. So if you tell them that you work from home on Thursdays, then work from home on Thursdays.

348. One contributor suggests: If you get loads of vacation as your salary “trade-off” (the contributor in question gets five weeks a year), *use it*; if you work for a “rocky” company, they might try to make you use it, or to say that you can’t use it, but make it clear that you can, and you will.

349. Cross-train yourself to expand your skill set.

350. Make it a point to talk to one person in your professional network each week. The time to do this is *before* you find yourself looking for a job.

351. Look for speaking opportunities at bar associations, high schools, civic groups, etc.

352. All jobs end. Prepare now.

353. Remember that you have a life.

354. Don’t neglect family time. Some day you will be old and feeble. Presumably you will want your children to come visit you at least once in a while. For them to *want* to do that, you must spend the time with them *now* to lay the groundwork for a solid relationship. If you spend all your time at work while they’re young, you shouldn’t count on suddenly being able to bond with them after they’re grown and gone—they’ll have their own lives by then (and maybe their own families) and will be too busy for you.

THINGS TO PONDER: WHAT DO YOU DO WHEN . . .

Each of these items is worth an article unto itself. They all bear thinking about now, before they land on your desk.

355. You get a letter from the SEC requesting clarifications of your financial statements from previous fiscal quarters.

356. The SEC (or NYSE or NASD) informs you that it is investigating an unusual number of transactions in your stock (or call options or put options) just before news that significantly changes your stock price.

357. You are told the company will encourage telecommuting to save office expenses/boost morale.

358. The CEO tells you he wants to RIF 20 percent of the workforce.

359. A key supplier goes bankrupt.

360. A key customer can’t pay—or wants to renegotiate its contract.

361. The CEO tells you he wants to outsource a critical business function.

362. The CEO asks you why you don’t have a robust patent program like the competitor down the street.

363. The products team tells you they just incorporated a feature/product that makes your product subject to export regulations.

364. Your software developers tell you that the company’s latest product release includes software that they got from the Internet with a “GPL” license. They want to know what that means.

365. You are served with a search warrant.

366. The EPA inspector arrives to check your emissions.

367. The IRS auditor arrives to review your returns.

368. The state tax auditor arrives to review your withholding and full-time, part-time, and consultant agreements.

369. A shareholder group files a Form 13-D stating that they have purchased X percent of your company's common stock and demands that your top management and board of directors resign.

370. Your CEO resigns.

371. Your CEO has a heart attack.

372. You get a call at 2 a.m. from the local police, telling you that your CEO (or her son) is in jail and refuses to submit to a blood alcohol test.

373. Your CEO asks you to do something unethical. ❏

GC Rules:

OVER 350

Things

May 2005

ACC Docket

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IS IT TIME TO

MOVE

BY KEITH E. GOTTFRIED

ACC Docket

April 2005



ON

TWO YEARS AGO, YOU LEFT YOUR LARGE LAW firm to accept a position with one of the firm's clients, ACME Manufacturing Corporation, a leading publicly held manufacturer of widgets based in California's Silicon Valley. This is your first in-house position, as assistant to the general counsel. ACME has a small legal department: It's just you, the GC, one paralegal, and one secretary. You've been getting broad exposure to in-house practice, you've been enjoying the reduction from your big firm workload, and you've formed a solid relationship with the GC and with the other corporate officers. But it hasn't been easy. You took a significant pay cut (only partially offset by stock options) and your hours have been getting longer as ACME has been very acquisitive of late and has significantly increased the number of its products, patent and trademark filings, employees, and markets. And, of course, then there's the Sarbanes-Oxley Act of 2002 and all of its reporting and other compliance requirements.

Although the demands on your small legal department have grown exponentially, your department's size and budget have stayed relatively flat. The opportunities for advancement that you hoped for don't seem to be materializing. And now it looks as if the bubble is starting to burst: ACME just announced that it will revise its revenue and earnings guidance downward for the full year due to increased competition from widgets.com.

? 14 Questions To Ask Yourself About Your Career



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Now the bad news is coming fast. Acme's stock is down so far that your stock options are completely under water. The class action lawyers are gearing up to file their pleadings. Acme's CEO is calling for a 20 percent across-the-board cut in spending for all department—and you know that means that legal, as part of overhead, will be expected to find more than 20 percent in spending cuts. Of course this means possible layoffs and a hiring freeze. You're being called on to not only continue to be responsible for all the company's SEC filings and corporate governance matters, but also to manage the new class action litigation and to address the myriad of legal issues involved in a reduction in force (e.g., severance agreements, notices to employees, and any necessary related disclosure in the SEC filings), and to do it without additional employees in your own department. And now the GC is telling you that although you are doing a great job, you may need to work even harder over the next twelve months. Is it time to move on?

The above scenario may seem familiar to many of you who are new to an in-house counsel position. Like the fictional counsel for ACME, you might not have sought out your position. You might have been recruited by one of the company's executives who liked your work as outside counsel or opposing counsel, or you might have been recruited by a headhunter who encouraged you to trade up to the "more relaxed, less stressful" lifestyle of in-house counsel. In any case, if you are in your first in-house counsel position, it is probably not the result of any well-thought-out plan or proactive career management decision. You probably interviewed with the company without knowing how best to evaluate whether the company and position were right for you. And you probably focused more on selling yourself to the company than on making the company sell itself to you.

This article will give you some criteria to use in reviewing whether your current in-house position is a good fit for you, whether there are steps that could improve your satisfaction and prospects in your current position, or whether it is time to move on and pursue your next in-house counsel position.

WHAT DO YOU REALLY WANT?

Before answering any career-related question, you first need to understand what you really want, both in terms of quality of life and professional satisfaction. If you left a law firm to join the company, you probably had a number of reasons for opting for an in-house counsel position:

- to avoid a lengthy commute,
- to avoid working weekends,
- to work more predictable hours,
- to get experience in a particular industry, or
- to pursue a competitive compensation and benefits package.

Have your goals changed—or have you lost sight of your goals? And, of course, you have to keep practical constraints in mind, such as limits on your mobility. If seeking a new in-house counsel position requires a move to another jurisdiction, would the move require you to take another bar exam, and if so, would you be willing to make the move?

HOW IS YOUR LEGAL DEPARTMENT REGARDED WITHIN YOUR COMPANY?

Those of us who came in-house from law firms can still recall how revered we attorneys were back at the firm. After all, we were the folks who generated the revenue, and we all knew at the end of each year how much revenue we generated based upon our billable hours and our billing rate. We were the thoroughbreds of the firm, and the finance and accounting guys were relegated to a strictly behind-the-scenes role. Imagine our shock when we arrived in-house to find that we were no longer the revenue generators, no longer the prized thoroughbreds. Rather, we were now part of the ever-shrinking general and administrative expenses (G&A) budget—and within G&A, the finance and accounting folks usually seem to carry more weight than legal folks.

After all, you would be hard-pressed to find a chief financial officer who reports to the general counsel. But reverse the reporting relationship and you will find plenty of examples.

The status of the legal department varies from company to company, depending on, for example,

- the general counsel's background;
- the type of industry that the company is in;
- the size of the company;
- the relationship between the general counsel and the CEO, and the genesis of that relationship;
- whether the company is publicly held; and
- the sophistication of the management team.

For instance, in an enterprise software company, the general counsel is more often than not a highly valued member of senior management because the

company depends on the legal department to negotiate software licenses with customers. Accordingly, the legal department plays a pivotal role in revenue generation. In contrast, in a company that manufactures widgets for domestic industrial use in an industry that is not highly regulated, the GC may not be so highly valued. In the latter case, the general counsel may be only a vice president rather than a senior vice president or an executive vice president, and may not even report directly to the CEO.

If you are at a company where the legal department is not appreciated, that will have consequences for budget allocation, pay increases, bonuses, and advancement opportunities. It will also affect your ability to stand up to the business folks and tell them "No."

WARNING SIGNS OF A LOW STATUS LEGAL DEPARTMENT

- The absence of the general counsel on the executive management team;
- The general counsel reports to the Chief Financial Officer as opposed to the Chief Executive Officer;
- An unrealistically low legal department budget;
- Size of the legal department relative to age of company and size of company (e.g., a Fortune 100 company with two in-house counsel);
- Frequent downward revisions of the budget very soon after it has been approved;
- Inability of the general counsel to manage costs by internalizing various legal activities;
- Inability to choose outside counsel or to fire existing outside counsel;
- Heavier reliance by the CEO and the Board on the advice of outside counsel than that of in-house counsel;
- Frequent overrides of the judgments of in-house counsel;
- Absence of the GC in the strategic planning process;
- Significantly lower compensation for the GC than other corporate officers;
- Designation of someone outside of the legal department as the Corporate Secretary, obviating the need for the GC to attend Board meetings; and
- Management of certain outside counsel by personnel outside of the legal department.

DOES YOUR AREA OF LEGAL EXPERTISE MESH WITH YOUR COMPANY'S CORE LEGAL COMPETENCIES?

In evaluating the legal department's stature within your company, you should also determine whether senior management views certain legal competencies as core legal competencies that must be housed within the company. For instance, an enterprise software company would find it very difficult to outsource the software licensing negotiation function traditionally handled in-house. Similarly, a major chain-store retailer would find it very difficult to outsource the negotiation of store leases with mall landlords.

If your own expertise does not mesh with the company's core legal competencies, that may be a sign that your future with the company will be limited. For example, if your area of expertise is mergers and acquisitions, and you are in-house counsel at a company that is not very acquisitive, your skills will not be valued at their full worth. You should consider either acquiring new skills that are a better match for your current position, or looking for a new position that is a better match for your current skills.

IS YOUR LEGAL DEPARTMENT THE SACRIFICIAL LAMB FOR BUDGET CUTTING?

Optimally, the legal department should have the flexibility to manage its work between in-house and outside counsel so that the company's legal needs

are addressed in the most cost-effective manner. In addition, having this flexibility creates more opportunities for in-house legal staff to develop and hone their skills as financial managers which, down the road, can create additional opportunities for them to add value to other parts of the company.

But if your company's management does not accord the legal department the appropriate respect, then you can expect the legal department to be among the first of the G&A functions called upon in times of budget cuts. It would be logical to expect outside counsel legal fees to be the natural target for cost cutting rather than the legal department's headcount. Often more than half of a legal department budget for a publicly held company is for outside counsel expenses, and certain outside counsel costs are staggeringly more expensive than in-house counsel costs for matters that, in a sophisticated legal department, can be done in-house (e.g., securities compliance, corporate governance, corporate secretary matters, coordination of board matters, licensing, risk management).

Unfortunately, that is not always the case. After all, a company will find the money to hire outside counsel to defend a class-action lawsuit, whether it has a budget for those costs or not. That being the case, it is usually headcount that gets cut when a company is

seeking to reduce its legal budget. Not surprisingly, the reduction in headcount typically has the opposite effect of what was intended, since more work eventually winds up being done by outside counsel at a significant multiple of what it would have cost in-house.

If your legal department is insufficiently funded, you may feel at times—perhaps quite often—that you are attempting to do your job with one hand tied behind your back or that there is no light at the end of the tunnel. That is particularly the case in new world of Sarbanes-Oxley. If your legal department is expected to handle the additional burdens imposed by Sarbanes-Oxley, as well as the implementing regulations of the Securities and Exchange Commission and the various self-regulatory organizations (e.g., NYSE and NASDAQ) without any additional in-house legal staff, that should be a clear sign that your company's management does not have a realistic assessment of what resources are required by the legal department.

ARE THE DEMANDS ON YOUR TIME MUCH MORE SEVERE THAN YOU BARGAINED FOR?

Some of you may have decided to leave a law firm and accept an in-house position in part for quality of

CORE LEGAL COMPETENCIES TYPICALLY ASSOCIATED WITH VARIOUS INDUSTRIES	
INDUSTRY	CORE LEGAL COMPETENCY
Computer Software	Intellectual Property Licensing
Retail	Real Estate Leasing; Employment
Energy	Environmental
Hospitality	Franchise Law; Employment; Real Estate
Defense	Government Contracting
Airline	Aviation Law; Labor Law
Hedge Fund	Investment Company Act
Pharmaceutical Company	Food & Drug Law (e.g., F.D.A. regulations)

life reasons. You may have accepted a significant cut from your law-firm compensation in exchange for working more of a traditional workweek and for being freed from the burden of billable hours.

Accordingly, if you find yourself having to work a schedule that comes close to your former law firm schedule and, to make matters worse, without the kind of support a law firm usually supplies (e.g., late-night support staff, meal reimbursement, car service home), you may need to revisit your decision. You should also consider what your schedule looks like out of the office. Although your in-house counsel position may not require as much time at the office as your law firm position did, you may have more demands on your time than you had expected. (For example, you may face frequent international travel, late-night or early-morning calls with the foreign regions, the need to constantly carry around a BlackBerry or similar device, and the need to answer email for many hours each weeknight and over the weekend).

AS AN IN-HOUSE COUNSEL, YOU ARE CONSTANTLY CALLED UPON TO EVALUATE RISK AND, MORE OFTEN THAN YOU WOULD LIKE, TO TELL THE LAY BUSINESSPERSON THE ALL-UNPOPULAR "NO" OR THE EVEN MORE UNPOPULAR "NO WAY."

HOW IS YOUR RELATIONSHIP WITH YOUR IMMEDIATE SUPERVISOR?

Those of you who came to your position from a law firm came from an environment where you were accountable to one or more partners or other attorneys at your firm, but had no true supervisor. But in an in-house position, your immediate supervisor—another in-house counsel, the general counsel, or another member of management—not only affects how much you enjoy your job and what type of assignments you get, but also how you grow within your job, how you advance, and, of course, whether you are recommended for salary increases and bonuses.

In an in-house position, you need a supervisor who will support your judgment. As an in-house counsel, you are constantly called upon to evaluate risk and, more often than you would like, to tell the lay businessperson the all-unpopular “No” or the even more unpopular “NO WAY.” The stakes can be high. It may be the last day of the quarter, and your “yes” may be all that is required for your company to meet the earnings estimates it gave Wall Street. Even though your “no” was (of course) offered only after a thorough exploration of the issues and risks, the lay businessperson is not likely to accept your “no” without a struggle that elevates the issue to your supervisor. In these situations, it is critical that your supervisor supports your judgment or, if he does find a path to “yes,” also finds a way to communicate it so that he does not undercut your stature or credibility and hinder your future dealings with this businessperson.

You also need a supervisor who takes an interest in your continuing professional development and gives you challenging assignments that allow you to increase your skills. For instance, even if your background is software licensing, you may want to get your feet wet in the federal securities compliance area by assisting with the current year’s proxy statement or annual report. Within reason, your supervisor should be receptive; particularly in a small legal department, it is clearly in everyone’s interest to have an in-house counsel staff with as wide a repertoire of skills as possible.

Ideally, your supervisor should be someone whom you can learn from or someone who can mentor you. One of the most uncomfortable working situations is one in which you are convinced that you know more than your supervisor. Of course, whether your supervisor is someone who enjoys teaching or mentoring is another story. Your initial inquiry should be whether this is a person whom you can model, observe, and learn from.

Your supervisor will often hold the ticket to how much exposure you get to the real action at the company. While at times you may enjoy the peaceful seclusion of your office or cubicle as you draft and review documents, it only advances your skills and career to be able to visit the front lines from time to time. Whether it is a board meeting, a face-to-face meeting with a potential business partner, a meeting with outside counsel, or a meeting with one or more members

of management, getting broader exposure to your “clients” and others involved in your work can both make your job more interesting and advance your stature within your company. Unfortunately, some supervisors are not prepared to share the limelight and may not encourage you to have such broader exposure. If your supervisor does not create opportunities for you to have such exposure, particularly after you have been there for at least six months, it may be a sign that he or she wants to keep you insulated both from others within and outside the company.

DO YOU HAVE GOOD RAPPORT WITH YOUR OTHER LEGAL DEPARTMENT COLLEAGUES?

Law firm life has many disadvantages, but it often offers a camaraderie or *esprit de corps* that can be missing in an in-house environment. At some of the larger big-city firms, entering classes of associates can be over one hundred in number, giving you an instant network of similarly situated colleagues, typically all of a similar age, educational background, and work ethic, with whom you can lunch, gossip at the water cooler, commiserate, swap legal precedent, or order dinner on those frequent late nights at the office. In contrast, a typical in-house legal department often offers less camaraderie. There is less homogeneity in age, educational background, and work ethic. And in most cases, there are simply fewer colleagues, given the relatively small size of most legal departments. Not only can it be harder to find things in common with colleagues, but it can also be harder in an in-house environment to avoid people that you just don't like.

Given the relatively huge amounts of time we spend at work, it is much more preferable to like the people you work with. If you are not enjoying collegial relationships in your current position, that is certainly a factor suggesting that it might be time to move on.

DOES YOUR COMPANY'S INDUSTRY INTEREST YOU?

Are you interested in what your company does? For some folks who are more functionally focused, the industry is irrelevant to their interest in their work. For others, in order to enjoy their jobs they

have to be excited about their company's industry. Most people would view an in-house counsel position at a movie studio, record label, fashion designer, or the maker of a very hot consumer product as more alluring than an in-house counsel position at an oil and gas company.

If being excited about the industry is important to you, but your company's industry holds little appeal, then you should consider looking for opportunities in industries of more interest to you. Consider ways to make yourself more marketable to those industries, even while you are in your current position. For example, if you are interested in the computer software industry, look for opportunities in your current position to learn more about intellectual property issues.

ARE THERE SUFFICIENT OPPORTUNITIES FOR YOU TO BECOME ENGAGED IN THE BUSINESS?

A successful career as an in-house lawyer in a highly valued legal department requires you to be more than just an attorney-adviser; your in-house clients are ultimately looking for someone who can be more of a business partner. Do the business folks at your company provide you with sufficient opportunities to give input on business as well as legal issues? For example, in negotiating a strategic partnership for the company, ideally you should be able to assist in shaping the terms of the partnership, rather than being relegated to commenting on or memorializing a transaction where most of the terms are already agreed.

If you yourself are still too inexperienced to offer sound advice, your GC or supervisors should be participating in these business decisions and mentoring your growing involvement in these areas. Keep in mind that if you feel you lack a sufficient business background, professional organizations like the ACC can also be a resource for references or courses that present business principles from the lawyer's point of view.

ARE YOU A “SITTING DUCK”?

Do you worry about being placed in an ethical quandary at some point in the future by your com-

*From this point on . . .
Explore information related to this topic.*

ACC RESOURCES:

- ACC's committees, such as the Law Department Management Committee, New to In-House Committee, and the Small Law Departments Committee, are excellent knowledge networks and have email lists 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 202.293.4103, ext. 314, or windley@acca.com or visit ACCA OnlineSM at www.acca.com/networks/.
- *Career Options for In-house Counsel*, an ACC InfoPAKSM (updated May 2004) available on ACCA OnlineSM at www.acca.com/infopaks/caroptions.html.
- *Creating Pathways to Diversity[®], From Lawyer to Business Partner: Career Advancement in Corporate Law Departments*, © MCCA, 2003, a report published by the Minority Corporate Counsel Association (MCCA) under its multiyear research initiative, *Creating Pathways to Diversity[®]*, available from the MCCA website at www.mcca.com/site/data/research/programs/RosePathways/index.html or by emailing shawnboynes@mcca.com for a hard copy.

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- Mary L. Burton, *IN TRANSITION* (Harper Collins Publishers 1991).
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If you like the resources listed here, visit ACC's Virtual LibrarySM on ACCA OnlineSM at 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 Senior Attorney and Legal Resources Manager Karen Palmer at 202.293.4103, ext. 342, or palmer@acca.com. If you have resources, including redacted documents, that you are willing to share, email electronic documents to Director of Legal Resources Julienne Bramesco at bramesco@acca.com.

pany's management? Is your company's management insufficiently sensitive to legal compliance issues? Has your company's management been insufficiently receptive to the changes mandated by the Sarbanes-Oxley Act of 2002? If the answer to any of the foregoing questions is yes, it may be time to move on, perhaps via parachute.

Once upon a time, you could give your in-house

clients advice and, while you hoped that they would follow it, if they didn't, generally you were none the worse off. Section 307 of the Sarbanes-Oxley Act of 2002 and the implementing attorney-conduct rules issued by the Securities and Exchange Commission changed that forever. Although strictly speaking these rules don't apply to attorneys who are deemed not to practice before the SEC, they are reshaping the ethical landscape in a way that no in-house counsel can ignore. Generally these rules require in-house counsel to report "up the ladder" evidence of any "material violation" by the company or a director, officer, employee, or agent of the company of which such attorneys become aware. The term "material violation" is defined to include:

- a material violation of federal or state securities law,
- a material breach of a fiduciary duty under federal or state law, or
- a similar material violation of any federal or state law.

Boiled down, it means that if you, as in-house counsel, become aware that your company is engaged in unlawful conduct, you must report it to your supervisor or the general counsel. If you are the general counsel, then you must ensure that your company takes remedial measures.

Over the past few years, there have been several high-profile examples of in-house counsel being prosecuted for engaging in or facilitating illegal conduct in cahoots with the company's management. Given these prosecutions and the new attorney-conduct rules, the last place you want to find yourself today is at a company that hasn't gotten religion, even after the scandals that engulfed companies like Enron, Computer Associates, Tyco, and WorldCom. Law enforcement authorities and the SEC have made it clear that they will not allow attorneys who become aware of illegal conduct by their in-house clients to hide behind their traditional duties of confidentiality and the doctrine of attorney-client privilege.

Above everything else, in determining whether to move on, you should evaluate, to the extent possible, the attitude of the management team toward ethics, legal compliance, corporate governance, and accounting and disclosure issues. If management appears to be overly aggressive in any of these areas, it may be a sign of a future problem and that it is time for you to go.

ARE YOU A FUTURE SITTING DUCK?

These are some red-flags signs that you could become a sitting duck. If too many of these signs apply to your company, it may be time to move on.

- Recent history of earnings restatements;
- Pending investigations by the SEC, the U.S. Justice Department or a self-regulatory organization (e.g., NYSE, AMEX or Nasdaq);
- Recent change in auditors;
- Recent turnover of the CFO and/or the General Counsel;
- Recent turnover in the board of directors;
- Recent history of the company or its management being sanctioned or censured by the SEC or other regulatory body;
- Frequent use of off-shore non-operating entities (e.g., lots of non-operating subsidiaries in the Cayman Islands);
- Frequent use of off-balance sheet or special purpose entities;
- Taking special charges quarter after quarter and year after year;
- Lots of related party transactions with directors and/or management;
- Infrequent meetings of the Board's audit and corporate governance committees;
- Amended SEC filings;
- Unusual risk factors in the SEC filings;
- Discussion of off-balance sheet obligations in the footnotes to the financial statements;
- Disregard by management for regulatory authorities;
- Excessive participation by non-financial personnel in accounting decisions;
- Lack of sufficient investment in the accounting, finance, and IT functions; and
- Overly aggressive and unrealistic financial targets and expectations for operating personnel to achieve.

ARE THERE OPPORTUNITIES AT YOUR COMPANY TO MOVE UP THE CORPORATE LADDER?

Are opportunities to advance and be promoted important to you? If so, do you want to advance within the legal function or do you want to advance outside of the legal function?

- If you want to advance within the legal function, you need to be aware of what opportunities are available within your department.
- Assuming you are not the general counsel, and that the general counsel position is unlikely to become vacant anytime soon, are there opportunities to advance to senior counsel, assistant general counsel, associate general counsel, or deputy general counsel? While the position of senior counsel is quite prevalent in legal departments, the other titles are less likely to be found in smaller legal departments.
- Are there opportunities to take on the additional role of corporate secretary? While the general counsel is often also the corporate secretary, in some companies the roles are separated. In other companies, assistant secretary positions may be available.
- Finally, is there an opportunity to take on a role such as vice president of legal affairs? In such a position, you run the legal department's day-to-day operations and report to the general counsel, who functions more as the company's chief legal officer. This kind of position is analogous to the position of vice president and corporate controller (who may also serve as the chief accounting officer) reporting to the senior vice president and chief financial officer.

If you are currently the general counsel and your title is vice president and general counsel, and you want to remain tied to the legal function, the next step on the ladder may be becoming a member of the executive management team as senior vice president or executive vice president. You should determine whether your company is amenable to this kind of promotion. If your company has traditionally had its general counsel on the second tier of its management structure, reporting up through either the chief financial officer or the chief operating officer, then it may be resistant to changing this structure. It may also be concerned that tinkering with the organizational chart would have a domino effect. For example, if you were promoted to senior

vice president, the vice president for marketing might seek a similar promotion, and the chief financial officer (already a senior vice president) might seek to be promoted to executive vice president.

If you are seeking a path out of the legal function, then you need to be aware of opportunities within your company to broaden your responsibilities to include other nonlegal functions:

- For example, if you are the company's in-house employment counsel, is there an opportunity to become the company's director or vice president for human resources?
- If you are the company's in-house merger and acquisitions counsel, is there an opportunity to become the company's director or vice president of business development?
- If you are a general counsel, are there opportunities to expand the scope of your responsibilities (e.g., human resources, business development, facilities, information technology, mergers & acquisitions, investor relations, stock administration, government affairs, business affairs, corporate communications)?

IF YOUR REVIEW SHOWS THAT YOU HAVE REACHED THE HIGHEST LEVEL THAT YOU CAN ASPIRE TO IN YOUR COMPANY, THEN BETTER OPPORTUNITIES MAY EXIST ELSEWHERE.

If your review shows that you have reached the highest level that you can aspire to in your company, then better opportunities may exist elsewhere.

DO YOU GET TO DO THE FUN STUFF?

If you came from a law firm, you may recall that attorneys there are strongly encouraged to network, accept speaking engagements, and serve as panelists or moderators for continuing legal education seminars. More often than not, these activities are expected to raise the firm's profile and support the firm's business development efforts. But some companies, reasoning that in-house counsel has no need

for business development, regard these activities as a waste of attorney time.

If your company falls into this category, consider pushing for changes in its policy, or add it to your list of reasons to consider moving on. These activities can offer invaluable professional experience that is often directly beneficial to the company. For example, the more often you speak or present in extracurricular activities, the better your presentation skills will become. In our PowerPoint-oriented culture, you will often draw upon these skills when you give presentations within your company, whether to the management team or at a board meeting. Networking at ACC, trade associations, and other events can also directly benefit the company. When you meet and develop relationships with your counterparts at other companies, these relationships can generate surprising dividends when your company finds itself in a potential dispute with, or is seeking to do a transaction with, one of these companies. You can also point out to your supervisors that when an in-house counsel makes a speech before a meeting of the local chapter of ACC, the company enhances its visibility in the community.

DOES YOUR COMPANY HAVE A VIABLE FUTURE?

During the internet boom days a few years back, it seemed like every law firm associate, as well as more than a few partners from prestigious law firms, was looking to jump ship to join a start-up. Few paused on the way over to perform due diligence to determine whether the company actually had a sustainable business model or sufficient financial resources to fund its growth. By 2001, many of these companies had gone under and these attorneys, who had hoped they had stumbled on this millennium's equivalent of the great California gold rush, were out of a job. Many of those who had formerly been partners at a law firm were able to return to their old jobs, their egos slightly bruised but otherwise with their careers intact. The former law firm associates who were only a few years out of law school had a much more difficult time rebounding and often could not reclaim their former law firm positions.

Your company's situation may not be as precarious as the typical start-up, but nevertheless you need

to assess whether your company will be around five years from now. Certainly, if the company's auditors have recently questioned the company's ability to continue as a going concern, that should be a sign that the future of the company is in doubt.

ARE YOU BEING ADEQUATELY COMPENSATED?

When you accepted your in-house counsel position two years ago, you may have taken a pay cut in exchange for a better lifestyle and with the hope that your target bonus and stock options would more than make up for the difference in base compensation. However, that tradeoff you made for a better lifestyle might not have turned out exactly as you would have expected. Your stock options may be "underwater" or worthless, notwithstanding that some have vested. Your bonus may be less certain than you expected, particularly since it may be based upon criteria over which you have little or no control (e.g., revenues, contribution or other margins, the extent to which the company's revenues or earnings exceed Wall Street's consensus estimates). If your compensation package does not meet your original goals, you should reevaluate your situation.

You would also be well served to do a market check and inquire about compensation for your counterparts at similarly sized companies in your region. Remember, law firms have tended in recent years to be very proactive in adjusting their associate salaries to be on a par with their competition. Companies are not under the same competitive pressure with respect to their legal staff.

IS YOUR COMPANY HEADED INTO LEGAL QUICKSAND?

If your company has recently become the target of the plaintiff's bar because of an earnings miss, an SEC or other governmental investigation, or a products liability issue, your near-term future as an in-house counsel at this company may consist of reviewing litigation pleadings, responding to discovery requests and subpoenas, and coordinating an endless array of document productions—all in addition to your routine legal work. Assuming your company is not going to increase the legal department's resources,

is this how you want to spend the next few years of your career? Or would you rather be part of a legal department that, free of such all-consuming activities, is able to be proactive and look for opportunities to contribute to the growth of the company?

MANAGE YOUR CAREER

More often than not, when it comes to proactively managing our careers, we in-house counsel, like other human beings, tend to avoid having to address the possibility of change unless it is absolutely forced upon us.

Because this may be your first in-house counsel position, you may not be sure what to expect from your position or how your position differs from other in-house counsel positions. The criteria in this article will help you determine whether it is time to

move on and look for a new in-house counsel position. These criteria must not be reviewed in a vacuum. They should be reviewed in the context of your personal goals and aspirations as well as the practical constraints on your ability to move on.

To the extent that you are not personally ready or able to make a change at the present time, you may also use these criteria to help you determine how you might get more satisfaction out of your current position.

Change is hard and uncomfortable, but so is stagnating in a job that has lost its luster for you or that no longer provides you with the necessary opportunities for professional growth and advancement. Assessing your current situation, and determining whether it is time to move on to a new opportunity, may require a difficult period of uncertainty, but it can put you on a trajectory to bigger and better things. ❏

the facts
of in-house

LiFe

In-House

by philip r. strauss

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“I was dreaming when I wrote this; forgive me if it goes astray.

But when I woke up this morning, could have sworn it was Judgment Day.

The sky was all purple, there were people running everywhere.

Trying to run from my destruction, you know I didn’t even care.”

song, “1999,” 1999, *Prince* (Warner Bros. 1985)

After several years of private practice and one year after Prince’s prediction, I decided to go in-house. The sky was not all purple, but there were people (including me) running everywhere. In fact, I found it to be quite a culture shock. So, trying to run from my destruction, I had to find some way to translate the lessons that I had learned in private practice to in-house life, but I was looking in the wrong place.

“Somebody I never met, but in a way I know, didn’t think that you could get so much from a picture show.”

song, “E=MC²,” *This Is Big Audio Dynamite*, *Big Audio Dynamite* (Sony 1985)

Turns out, I had learned everything I needed to know for success in-house from the movies, music, and books of my junior high, high school, and college years. Those years spanned the 1980s. So without further ado, here are the 80s things I wish I had known (or remembered) when I went in-house.

THE IN-HOUSE ENVIRONMENT

“I’m looking for a new direction. Where in the world am I?”

“New Direction,” *Echo & The Bunnymen*, *Echo & The Bunnymen* (Warner Bros. 1987)

1. “People are afraid to merge onto the freeway in Los Angeles.”

book, *Less Than Zero*, Bret Easton Ellis (Random House Value Publishing 1987)

These opening lines of *Less Than Zero* are repeated by the protagonist throughout the book and are relevant to in-house practice in two ways. First, they illustrate a tendency to generalize. Unlike the law firm, many of your clients will not have dealt with lawyers very often and will bring generalizations—positive and negative—about lawyers. Some will be positive; more will be negative. You have to be keenly aware of people’s perceptions. Second, they express the protagonist’s feelings that he doesn’t quite fit into his Los Angeles life anymore. Lawyers just don’t fit perfectly into the corporate institution. Many of these 80s things address how to improve that imperfect fit.

2. “All you want to hear is the audience’s applause. You can’t get onstage for a contract clause.”

song, “On Through the Night,” *Def Leppard* (Mercury/Universal 1981)

All of us have been accused of being part of “the department of business prevention” or some similar in-house slur. Unfortunately, some people view legal departments as a necessary impediment to doing business. Even if you are lucky enough to join a department that has overcome this reputation, new hires outside the department may enter with legal department prejudices developed at other companies. An unacceptable contract clause will rarely justify the lack of business progress for any nonlegal business professional. The best way to change this situation is to frame issues in terms of business realities rather than contractual provisions. “This ‘work for hire’ clause is not acceptable” means nothing to a product manager. “Under the proposed business arrangement, you will not own or be able to sell the XYZ project” highlights the same problem, but frames it as a business issue rather than a contract issue.

3. “It’s kinda social. Demented and sad, but social.”
movie, *The Breakfast Club* (Universal Studios 1985)

Unlike a law firm, the majority of people in a corporation have no connection to law. As a result, the legal department may be somewhat isolated, both socially and professionally. The legal department may be regarded with the same mix of awe and pity

accorded to the physics club in *The Breakfast Club*. Be an ambassador for the legal department and get to know folks outside the department. Often, knowing the name of somebody's child or how somebody spends their free time will help you get things done more effectively by adding a human element to your legal duties.

4. "Here in my car I feel safest of all. I can lock all my doors. It's the only way to live—in cars."
 song, "Cars," *The Pleasure Principle*, Gary Numan (Beggars Banquet Us 1979)

As you get out to meet folks outside the legal department, you will need other lawyers with whom you can commiserate and celebrate. Don't lock yourself in your car, and don't be a hermit within the legal community! For whatever reason—overwork, the thrill of freedom from law firm serfdom, general disinterest—there is a tendency to shut out the rest of the legal world after you go in-house. ACC, local bar associations, your old private-practice colleagues, your informal network, and trade associations are all good places to meet other lawyers. Keep in touch! The networking may just come in handy someday.

5. "I don't want to sell anything, buy anything, or process anything as a career. I don't want to sell anything bought or processed, or buy anything sold or processed, or process anything sold, bought, or processed, or repair anything sold, bought, or processed. You know, as a career, I don't want to do that."

movie, *Say Anything* (20th Century Fox 1989)

Lloyd Dobler, the main character in *Say Anything*, could have made it as outside counsel, but not as in-house counsel. To avoid being mere scribes, in-house lawyers must examine and define their roles in the corporation. Most in-house lawyers *buy, process, or sell* stuff. I have sold software for over five years. I wasn't out there in the field visiting customers, but I helped with the contracts that memorialized those transactions, and I ensured that my clients had the rights to embed the necessary third-party intellectual property in the software that I sold. The more closely you can associate yourself and your role with your company's core business, the better counselor you can be.

6. "I should have learned to play the guitar. I should have learned to play them drums."

song, "Money for Nothing," *Money for Nothing, Dire Straits* (Warner Bros. 1990)

The great thing about private practice was getting to know a little about a lot of different industries and corporations. In my first year of private practice, I worked on cases involving defective operating tables, recalled antibiotics, foreign currency trading, medical device patents, and diet powder sales compensation, to name a few. I learned a little about limited aspects of those businesses at discrete moments in time. The great thing about in-house is getting to know a lot about one industry over a long period of time. The better you know the business, the better you can serve your clients. Go on a sales call to understand the competitive landscape your salespeople face. Visit the research and development department when a production deadline is approaching. Learn about the amount of work that goes into developing a national advertising campaign. Round out your business side as you round out your legal skills.

7. "When I get high, I get high on speed. Top-fuel funny car's a drug for me. My heart, my heart, kickstart my heart."

song, "Kickstart My Heart," *Dr. Feelgood, Motley Crüe* (Hip-O Records 1999)

It is a fundamental principle of finance that high rewards come from high-risk business opportunities. Usually, your job is not to convince your clients not to enter a race; it is to make sure that they have considered the risks and taken (or know about) any available precautions. Because you cannot eliminate all possible risk, approach all decisions as a risk manager.

8. "Mr. Gorbachev, open this gate! Mr. Gorbachev, tear down this wall!"

speech, *President Ronald Reagan, Remarks at the Brandenburg Gate* (1987)

As in-house counsel, you will be called upon to work in or lead cross-functional teams of HR, finance, sales, marketing, and R&D folks; building consensus among these key stakeholders—all of whom are your clients—is critical to your success. Like any institution, there are some natural and artificial walls between these departments. If you can institute your own *perestroika* and get those departments to share information more freely and cooperate more often, you will be hailed as a great leader. (One would hope that you would not

fall to a coup soon thereafter, however.) As in diplomacy, calling a “summit” may be your best hope. While getting all stakeholders or their delegates into a room may not immediately resolve all conflicts, it may set in motion a process of conflict resolution.

9. “You gotta learn to kick ass if you want to be a peacemaker.”

movie, *Superman 2* (Warner Bros. 1981)

Lawyers have excellent execution skills. Sometimes, on your cross-functional teams, despite your best efforts to be diplomatic, the need for consensus causes paralysis. I call this “consensalysis.” At that point, take the lead, assign tasks, and execute!

10. “When a problem comes along, you must whip it.”

song, “Whip It,” *Are We Not Men?* Devo (Warner Bros. 1980)

Often, when you are in-house, the proverbial buck stops with you. Enjoy a bit of authority; you’ve earned it!

11. “I don’t think there are any Russians, and there ain’t no Yanks. Just corporate criminals playing with tanks.”

song, “The Walls Came Down,” *The Call, The Call* (Mercury Records 1980)

This band captured a certain anticorporate backlash of the 1980s that seems to be repeated here two decades later. Whatever corporate issue your company may be dealing with—government contracting scandals, labor conditions in Asia, leading the charge against stock option expensing—expect to confront the anticorporation movement. And be prepared to defend your corporation within the bounds of the law and ethics.

12. “If you break the law, you got to pay your dues, Ain’t it much better if you play it by the rules?”

song, “No Parking (On the Dance Floor),” *No Parking on the Dance Floor, Midnight Star* (Capitol 1983)

A quick survey of the corporate scandals of the past two years (or the 1980s, for that matter) saw plenty of in-house lawyers (but few outside counsel) in handcuffs. Simply put, the stakes are higher in-house.

13. “Darling you’ve got to let me know. Should I stay or should I go? If I go there will be trouble, and if I stay it will be double.”

song, “Should I Stay or Should I Go?,” *Combat Rock, The Clash* (Sony 1982)

The rules on your duty to report corporate misconduct or resign depend on your state’s professional responsibility rules, the SEC’s up-the-ladder reporting regime, and the more draconian proposed “noisy withdrawal” rules. This is especially difficult if you are the sole or chief legal officer and have no senior lawyer to whom you can report up. Know these rules and engage in some scenario planning. What would you do if ABC situation happens? What about XYZ situation?

14. “Don’t say no.”

song, “Don’t Say No,” *Don’t Say No, Billy Squier* (Capitol 1981)
and

15. “Well I kept saying no. No, no, no, no, no.”
song, “No No No,” *No No No, Def Leppard* (Mercury/Universal 1981)

Again, the classic conundrum of the in-house lawyer is not to be tagged the “department of business prevention,” but still to prevent bad (*i.e.*, unnecessarily risky or illegal) business. Thus, I have juxtaposed quotes representing the extremes of this conundrum. In general, heed Billy Squier’s caveat: “Don’t Say No,” but say it a little more productively: “No, but we can do it this way...” and come up with one or more alternatives that drive business and protect the company. But remember that there are situations where the proposed action and all alternatives are simply unacceptable. In those cases, you have to be firm and heed Def Leppard’s words: “No no no no no.”

16. “And I’m looking in the mirror all the time, wondering what she don’t see in me. I’ve been funny, I’ve been cool with the lines. Ain’t that the way life’s supposed to be?”

song, “Jessie’s Girl,” *Working Class Dog, Rick Springfield* (RCA 1981)

The envy in this song is similar to the envy you will find in-house. As a lawyer, you are definitely “cool with the lines,” but you are in a *supporting* role. The founders of the company, the top salespeople, the award-winning engineers, these are the people who get to date the proverbial prom king/queen. You may read your proxy statement and say “how did that idiot get

such a big bonus?" You may toil nights and weekends to close a deal without much sales support while somebody else gets the fat commission check. Back in your law firm, you were the product; you were the star. In-house, you are not. It is one of the toughest transitions and one that, like envy, can creep up years later if you lose sight of the benefits of being a lawyer in-house: not having your nosy office neighbor know your salary and not having to chase a quota every single quarter.

17. "Oh the heads that turn, make my back burn." song, "She Sells Sanctuary," *Love, The Cult* (Beggars Banquet Us 1985)

Even though you are a supporting actor, you will be in the spotlight, usually at the worst possible moment. "That is stuck in legal" is the last desperate cry of a businessperson looking for an excuse for his boss. Of course, "stuck in legal" may mean (a) the matter is stuck in the customer's legal department; (b) legal has expressed concerns about a concept raised by the business team; or, most likely, (c) the matter sat in the business person's in-box for two weeks and was submitted to legal this morning. It takes less time to do something to get it "out of legal" than to argue why it isn't really "in legal." Call and email the customer's legal department daily and cc your team to let them know you are working. Reiterate your conceptual concerns and offer to draft a term sheet that would address them. Pay attention to the time gaps in email strings forwarded to you and point them out early to prevent future delays.

18. "I'm sorry, who are you again?" "I'm Frieda's boss." "Who's Frieda?" "My secretary." movie, *Fletch* (Universal Studios 1985)

Like *Fletch*, the enterprising investigative journalist of the eponymous film, you probably will not have a secretary or assistant. If you do, close your eyes, thank the in-house gods, and move on to the next paragraph. If you do not, then your choices are (1) to lie about it like *Fletch* did, or (2) to get yourself organized and learn how to work the fax machine. This should be easy; people love being able (for once) to show a lawyer something they don't know. On a similar note, it may take a while to get used to being in a cubicle rather than an office, if those are your assigned digs. Invoke attorney-client privilege as a reason you should be located in a private office instead. If that doesn't work, then schedule a conference call with the cus-

tomers who has the most ornery counsel. Take the call on speakerphone in your cubicle and get into a yelling match with your adversary. The people in the cubicles around you will complain and you will get that private office. Seriously, it worked for me!

19. "They come running just as fast as they can, 'cause every girl's crazy 'bout a sharp dressed man." song, "Sharp Dressed Man," *Eliminator*, ZZ Top (Warner Bros. 1983)

Depending on where you are, the cuff links and stickpin worn by the song's hero may not be appropriate, but you should pay attention to your dress. Many people come in-house from firms that required business attire. Many legal departments, especially in my neighborhood (Silicon Valley) wear jeans daily. I will say more about unintentional messages in #48, but understand that the way you dress will send a message. Overdressing may alienate your clients. Underdressing may make you seem less professional. Be aware of this dynamic.

20. "Wild Thing, I think you move me. But I wanna know for sure. Everytime I kiss you I taste what other men had for lunch!"

song, "Wild Thing," *Have You Seen Me Lately?* Sam Kinison (Warner Bros. 1990)

In a law firm, generally, a deal or a case may have had a few lawyers touch it over time. An in-house lawyer inherits the corporation's (and any acquisition's) problems dating back to formation. These include ineffective assistance of counsel or vastly different style of counsel. Be prepared to wince at what your predecessor may have done (or not done). When you have to amend or modify a contract that you did not originally do, look at the contract well in advance to identify any problems or ambiguities.

21. "Better get a bucket. I'm going to throw up." "A bucket for monsieur!"

movie, *Monty Python's The Meaning of Life* (Universal Studios 1983)

In-house practice is a customer service business. Accordingly, you need to emulate your favorite waiter in your favorite restaurant. Be present when needed; otherwise don't get in their way. Know what is on the menu and be prepared to make recommendations. And always take notes, even if you know you will remember the order!

THE PEOPLE

“People are people so why should it be, you and I should get along so awfully?”
 song, *“People Are People,” Some Great Reward, Depeche Mode (Warner Bros. 1984)*

22. “When they say ‘why? why?,’ tell them that it’s human nature.”
 song, *“Human Nature,” Thriller, Michael Jackson (Sony 1983)*

You have to be attuned to human dynamics, more so as you become more involved in management. “Please” and “thank you,” conspicuous in their absence in law firms, must bracket all requests you make of your colleagues inside and outside the legal department.

23. “I get along fine with them friends of mine but you have to make a choice, You’re singing out of tune but the beat’s in time and it’s us who makes the noise.”
 song, *“New Religion,” Rio, Duran Duran (Capitol 1982)*

If you heed my advice in #3, you will ultimately have friends outside the legal department. You will one day find yourself in a conflict position as a result of these relationships. Either you will know something that you would want to tell them as a friend (e.g., that they are on the list of employees considered for downsizing), or they will approach you with a matter “as a friend, not as a lawyer.” As Duran Duran advises, you have to make a choice, keep the beat in time, and make the noise. You didn’t need me (or Duran Duran) to tell you what to do. On second thought, maybe legal department isolation has its benefits....

24. “You consider me the young apprentice, caught between the Scylla and Charybdis... I have only come here seeking knowledge, things they would not teach me of in college.”
 song, *“Wrapped Around Your Finger,” Synchronicity, The Police (A&M Records 1983)*

This one is simple. Mentors are more important in-house than they are in law firms. The bad news is that they are harder to find. The good news is that they don’t necessarily have to be lawyers and they don’t necessarily have to be at the same corporation.

My mentor is as great a resource as ever, even when he is working at a different company from me.

25. “My gang’s my family, it’s all that I have.”
 song, *“Colors,” Power, Ice-T (Warner Bros. 1988)*

Like the streets of gangland, it is important to shore up allies in the corporation early. Don’t be narrow in your selection; you might find help in unexpected places and at all levels. Back in the law firm, you probably learned that the paralegals knew more than the junior associates. It is the same in-house; hierarchy exists, but don’t make more of it than it deserves.

26. “Do you know where there are any person-ages of historical significance around here?”
 movie, *Bill & Ted’s Excellent Adventure (MGM/UA Studios 1989)*

Critical among your base of allies is to find out who has institutional memory in all of the areas where you are likely to need information: HR, sales, R&D, and marketing. Similarly, you are ideally situated to become the institutional memory of legal, if not the whole corporation, which ultimately will vault you to the top of other folks’ allies lists.

27. “The 1961 Ferrari 250GT California. Less than a hundred were made. My father spent three years restoring this car. It is his love, it is his passion...”
“It is his fault he didn’t lock the garage.”
 movie, *Ferris Bueller’s Day Off (Paramount Studio 1986)*

People will rationalize anything in business. “We need to do this to get their business,” or “we really need this deal to make the quarter.” Those may be perfectly legitimate business reasons and, if true, may ultimately drive shareholder value. But they may be unethical or illegal. Expect this behavior; don’t leave the garage unlocked on days your son is home from school and don’t give the sales team an excuse for bypassing your review on the last day of the quarter.

SETTING YOUR AND YOUR CLIENTS’ EXPECTATIONS

“Captain, maybe we ought to turn on the search lights now?”

“No. That’s just what they will be expecting us to do.”

movie, *Airplane (Paramount Studios 1980)*

28. “I am, I am, I am Superman, and I can do anything.”

song, “Superman,” *Life’s Rich Pageant*, REM (Capitol 1986)

Even if you don’t think you are superman (or superwoman), your clients may expect you to be superperson. There is more pressure when you are in-house to present a solution to any legal barrier you identify than there is for a law firm lawyer who is not part of the ongoing business. Most of your clients will not know that a copyright specialist is very different from a patent specialist and that you wouldn’t want either one of them anywhere near a 10-K. They think “you are a lawyer, this is legal, ergo you should know this.” I frequently use the analogy that I am a primary-care physician and I can diagnose a brain problem, but they wouldn’t want me doing brain surgery. Hopefully, they still think I am Superman, but realize that there are some tall buildings that I cannot leap in a single bound.

29. “You were going to set the world on fire. When will you ever learn?”

song, “You Give Love a Bad Name,” *Slippery When Wet*, Bon Jovi (Mercury/Universal 1986)

In a law firm, your clients are generally smart, diligent, and motivated. At the very least, the better ones have learned to maximize the use of your time because they ultimately receive a bill for it. When you go in-house, you cannot have Wall Street expectations of Main Street clients. You will set yourself up for failure and it will reinforce the perceptions of isolation and arrogance against which you are constantly fighting. So start with low expectations and then train your clients to help you do your job better. I use a self-deprecating PowerPoint presentation analogizing the client-lawyer relationship to an owner-puppy relationship (see #55 for more on this point). If you can do it in a way that is not preachy or condescending, most of them will give you the information you need up front with realistic deadlines. And Bon Jovi would say, that gives in-house law a good name!

30. “You made me, promises promises, I knew you’d never keep.”

song, “Promises Promises,” *Naked Eyes*, Naked Eyes (1983)

As a lawyer, you have been trained to deliver on

your promises. But you cannot expect your new nonlawyer colleagues to be so diligent. Set your expectations and deadlines so that you can overcome the inevitable broken promise from the Biz Dev team. If that team is the one checking whether you can meet a technical deadline and you have not heard back from them, you want to leave enough time to get the information for yourself.

31. “You are a neo-maxie zoom dweebie.”
movie, *The Breakfast Club* (Universal Studios 1985)

If you have been hired to do licensing and you aren’t a neo-maxie zoom dweebie (*i.e.*, expert) when it comes to licensing, you need to find a way to become one quickly. My first in-house position was as a licensing lawyer, but my background was as a litigator-turned-corporate lawyer. I pled Socratic ignorance with respect to licensing, but was able, through my diligence and my mentor’s patience, to become a neo-maxie zoom licensing dweebie. You will become a dweebie in many areas over time. After all, nothing we do is rocket science. (By the way, while I am being a dweebie, what do the folks at Boeing say when they want to express a relative lack of difficulty, because the task to which they are referring may, indeed, be “rocket science”?) The point is to realize that it only takes a couple of times to become an export filing dweebie. Remember, being more of a generalist and learning new areas of the law are probably some of the reasons you went in-house.

32. “Nobody ever told me, I found out for myself... Don’t look at me for answers. Don’t ask me, I don’t know!”

song, “I Don’t Know,” *Ozzy Osbourne, Blizzard of Ozz* (Sony 1980)

Even the neo-est maxi-est zoom-est dweebie cannot possibly know everything, so don’t be afraid to admit that you don’t know an answer, but remember that even the Ozzman had the good sense to go find stuff out for himself. Constantly take inventory of your internal and external sources of information. If you are unsure, the ACC website and network are great places to start.

33. “Not many girls in contemporary American society would give their underwear to help a geek like me.”

movie, *Sixteen Candles* (Universal Studios 1984)

This is simple. Express appreciation to your in-house clients and your outside counsel at every possible opportunity. This is possibly the highest ROI investment you can make in-house.

GETTING THE JOB DONE

“Say ‘Hello’ to my little friend.”

movie, *Scarface* (Universal Studios 1983)

34. “I straddle the line of discord and rhyme and I’m hungry like the wolf.”

song, “Hungry Like the Wolf,” *Rio*, Duran Duran (Capitol 1982)

The primary key to success in-house is to drive business (to rhyme) while protecting the business (to maintain a healthy degree of discord). There are no simple rules for when each is appropriate. But you need to be sensitive to this dynamic and you will, over time, develop a feel for when to be discordant or harmonious. For example, I was in a legal department that had a knee-jerk reaction against approving nonbinding letters of intent, reasoning that there was no need to go through the formality of negotiating and signing a document that ultimately was not enforceable. When the business team convinced me that a nonbinding LOI had an important “moral” importance to the business relationship, my discord turned to rhyme and I commented on and approved the document, only to receive pushback from my superiors. Other times, when I have struck a discordant note in deference to corporate policy, I have received pushback to relax policy to drive business. As you undertake bigger challenges in your career, straddling this line will remain difficult.

35. “I’m a fool in your game . . . You’re just wasting my time. All you do is talk talk.”

song, “Talk Talk,” *Talk Talk* (EMI International 1982)

An economist looking at in-house practice would say that it suffers from a “free rider” or “negative externality” problem, insofar as your clients don’t bear the true cost of the legal services they get from you. A noneconomist would say that some clients will waste your valuable time. Perceived importance

does not equal true importance; this goes both ways. Your clients may wrongly see something as important and then talk talk talk about it. At the very least, they will see their task as more “mission critical” than that of one of your other clients. On the other hand, you may not fully appreciate that a simple, routine NDA is holding up a major strategic partnership. The key is to get credibility with respect to the prioritization of clients’ assignments and to determine the credibility of your clients when they make requests of you. One of my colleagues takes the approach of expediting a client’s first project to gain credibility, then prioritizing subsequent projects.

36. “Don’t rush me sonny. You rush a miracle man, you get rotten miracles.”

movie, *The Princess Bride* (MGM/UA Studios 1987)

Time demands in-house are very different from those in a law firm. Most likely, you will be working far fewer hours on far more matters. Time management is critical. You will have a lot more leeway in terms of what, when, and at what pace to do your assignments. I’d suggest enjoying your freedom from billing hours for a while, but at some point, keep track of your time for a month to get a real idea how you spend your days and to look for ways to be more efficient. How much of what you are doing could be done faster by outside counsel? How much could be done cheaper by an in-house paralegal? Do a “checkup” every month or so.

37. “I push, I struggle, I’m living in the Eighties.”

song, “Eighties,” *Night Time*, *Killing Joke* (E.G. Records 1985)

If you are always pushing and struggling, you are most definitely not living in the eighties, *i.e.*, on the right side of the “80-20 Rule.” (If you want to sound erudite, you can call it the (Vilfredo) Pareto Principle, though it was applied in common parlance by Dr. Joseph Juran.) The Pareto Principle says that 80 percent of the work can be done in 20 percent of the time. The most important thing for in-house counsel is to recognize which tasks require a less-than-perfect effort to both drive business and minimize risk. Save the virtuoso lawyer performance for IP ownership clauses, M&A indemnities, and resolving SarbOx whistleblower complaints.

38. “It’s 106 miles to Chicago. We’ve got a full tank of gas, half a pack of cigarettes, it’s dark, and we’re wearing sunglasses. Hit it!”

movie, *The Blues Brothers* (Universal Studios 1980)

Resources in-house are finite. Often, you cannot hire consultants or outside counsel for a project and you don’t have the luxury of time. In such cases, you must, like Jake and Elwood Blues, take inventory of the resources that you *do* have, and “Hit it.” Hint: there are a lot of great resources within ACC.

39. “What do you make of this?” “I can make a hat, a brooch, or a pterodactyl!”

movie, *Airplane* (Paramount Studios 1980)

In-house you will find much less deference to forms and transaction precedent than you do in a law firm. So exercise that creative side that you have ignored since 5th grade art class. If you can draft a nonsolicitation clause that works for you, your client, and the customer, then why spend an hour looking for that perfect model clause? And, as stated in #50, it is preferable to craft your words in the “modern minimalist” style; the shorter and more clear you can make your contracts, the better.

40. “What did we have for dinner?” “We had a choice: fish or steak.” “Ahhh, yes, I remember now... I had lasagna.”

movie, *Airplane* (Paramount Studios 1980)

In business and in-house, you are expected to think outside of the box. This goes hand-in-hand with creative problem-solving. Just remember to think outside the box but within those other boxes they call the law and ethics. Engage in brainstorming, where you suggest and solicit options and list them without discussing the merit (or lack thereof) until all possibilities have been listed. Only then do you begin to weigh risk/reward/reality of the options. Make it clear that you are merely brainstorming and that you have not thought through the options but will give each one due consideration.

41. “We have a pond in the back. We have a pool and a pond. The pond would be good for you.”

movie, *Caddyshack* (Warner Studios 1980)

As inviting as the pool may have been in your days of private practice, as in-house counsel you have to roll up your sleeves, get your hands dirty,

and jump in an occasional pond. As a lawyer responsible for a matter, you will generally have to do all of the “associate-level” tasks as well as the “senior partner-level” tasks. Aside from sending your own faxes and opening your own mail, as detailed in #18, you will have to do your own NDAs and slog through discovery documents before sending them to outside counsel. Just remember that the free fish live in the pond, not the aquarium pools.

42. “I asked of my reflection, ‘tell me what is there to do?’ ”

song, “Tempted,” *Singles 45’s and Under, Squeeze* (A&M Records 1981)

I have worked in three very different in-house legal departments and, as great as each was, there were a lot of improvements that could be made in each one. When you start at a new company, you have the unjaded perspective of an overpriced strategy consultant. Take note of what you would change before you become assimilated. Put your list away until you become credible. And when you get a free moment, get out that list and start making your department better. Profile and put all of your contracts online. Make that signature policy a flowchart or a matrix so that it’s easier to read. Pull out that rarely used Referral Agreement and see if you can make it half a page shorter.

43. “The most valuable commodity I know of is information.”

movie, *Wall Street* (Twentieth Century Fox 1987)

The more you know, the more valuable you will be and the more you will get done. Knowledge of the law, knowledge of the company, knowledge of the industry, knowledge of the economy, and even, sometimes, knowledge of pop culture. Your goal should be that if they had a Trivial Pursuit® contest at your corporation, you would be one of the first people picked.

44. “So let me take you by the hand and lead you on this dance, ’cause what I’ve got is because I took a chance.”

song, “Control,” *Control, Janet Jackson* (A&M Records 1986)

In-house, you will become a quick study in the corporate budget process. Here’s a hint: focus on controlling your variable costs, the largest of which

will be outside counsel expense. You need to control and focus your outside counsel or you will crash and burn in Budget 101. Lead your outside counsel on the dance—tell them how long to dance and with whom. That said, don't micromanage them. And I urge you, if you can, take a chance and experiment with alternative billing arrangements.

45. “[Bob Hope] doesn't play police actions, just wars...” “How about if it escalated?...” “We are not going to escalate a whole war just so we can book a big name comedian!”

movie, *Good Morning, Vietnam* (Touchstone 1988)

Often, you will find that you are “accountable without authority.” In such cases, you have to determine where you will get your authority. For each such matter, work with your client to agree on an appropriate escalation path for issues outside your (or their) authority.

46. “You broke my nose!” “It looks better that way.”

movie, *My Bodyguard* (Fox Home Entertainment 1980)

Use outside counsel as your own personal bodyguard. If the CEO's good friend is the VP of Sales, your longevity may be best served by letting outside counsel investigate alleged policy violations. If you are negotiating a merger and hope to join the merged company, you may do well to let outside counsel take a firm position (and most of the heat) on certain contentious issues.

47. “What you gonna do when things go wrong? What you gonna do when it all cracks up? What you gonna do when the love burns down? What you gonna do when the flames go up? Who is gonna come and turn the tide? What's it gonna take to make a dream survive? Who's got the touch to calm the storm inside? Who's gonna save you? Alive and kicking.”

song, “Alive and Kicking,” *Once Upon a Time, Simple Minds* (A&M Records 1985)

This is simple. Plan ahead for specific, relevant scenarios. What would you do if there were a terrorist incident near your office? What would you do if the CEO called you from jail at midnight? What would you do if you got an SEC Wells Notice? What would you do if your company's

critical component supplier declared bankruptcy? Though the relevant questions will be unique to each company, two universal and fundamental scenarios are: (1) what would you need to do to be ready to respond to a due diligence request from a potential acquirer and (2) what would you need to do to be ready to defend your company in whatever is the most likely litigation it would face?

COMMUNICATING WITH CLIENTS

**“You see it your way, I'll see it mine.
Well, conversation is a useless change of line.”**
song, “Lack of Communication,” *Out of the Cellar*, Ratt (Atlantic 1984)

48. “And in the silence, I think of you. I send a message, hope it gets through.”

song, “I Send a Message,” *The Swing*, INXS (Atlantic 1984)

Pay constant attention to the unintentional messages you want to send and don't want to send. This advice goes for all of your client communications, but especially for meetings. Looking at your watch, interrupting a meeting to look over at the email that just chimed on your computer, checking the caller ID on an incoming phone call, looking at your BlackBerry, all of these things may send the unintentional message that you don't feel your client's problem is very important. On the other hand, orienting your office so that you meet with clients at a table where your back is to your desk, computer, and phone sends a message that they have your full attention for the time of the meeting. When you know you may be interrupted for another high-priority matter, warn the client with whom you are meeting in advance and be sure to be extra-attentive the next time you meet with him or her.

49. “Hush hush. Keep it down now. Voices carry.”
song, “Voices Carry,” *Voices Carry*, Til Tuesday (Sony 1985)

It may come as a surprise, but the halls of your company are just full of *nonessential third parties!* As true as that may be, I wouldn't recommend walking down the hall and pointing to folks and calling them “nonessential;” those who have not been to law school may take offense. But you (continued on page 58)

(continued from page 35) do need to know that you cannot assume attorney-client privilege applies like it does in the hallowed halls of your old law firm. Constantly pay attention to privilege—do I want privilege for this and am I taking the correct steps to preserve it?

50. “And there are simply too many notes. Just cut a few and it will be perfect.”

movie, *Amadeus* (Warner Studios 1984)

Shorter documents and correspondence will serve you well. By using short, user-friendly forms and focusing only on what really matters, you can reinforce the message that your company is easy to do business with. I’d say more, but that would violate this principle.

51. “Dream of better lives, the kind which never hate, wrapped in a state of imaginary grace.”

song, “I Melt with You,” *After the Snow, Modern English* (Warner Bros 1982)

As lawyers we all (should) know that the “which” in the foregoing line is an erroneous use of a nonrestrictive qualifier in a clearly restrictive context. But the song is probably one of the best of the 80s and would not be improved by the use of “that” instead of “which.” The point is, some things may be ok, even with arcane grammatical errors, such as the preposition at the end of the sentence in the penultimate sentence of the preceding paragraph.

52. “Very clever dinner. Appetizing food fit neatly into interesting round pie.”

“It’s a quiche.” “How do you spell?” “You don’t spell it, son, you eat it!”

movie, *Sixteen Candles* (Universal Studios 1984)

Remember that contracts, like quiches, have a purpose, and it is not to show off your drafting skills.

53. “When I have nothing to say, my lips are sealed.”

song, “Psycho Killer,” 77, *The Talking Heads* (Warner Bros. 1977)

This is simple, but often forgotten. Shut up and listen before you speak. A client may approach you with a problem and you may think you know the answer 10 seconds into her speech. Let her finish. At the very least, it will give her a chance to show

you, and you a chance to express, what a great client she is. In some cases, you may hear some relevant information that would change your initial assessment.

54. “Sorry folks, we’re closed for two weeks to clean and repair America’s favorite family fun park. Sorry...” “Now you listen to me We just drove 2,460 miles, just for [Wally World]. The Moose says you’re closed, I say you’re open.”
movie, *National Lampoon’s Vacation* (Warner Studios 1983)

Management, and people in general, can handle bad news, but they do not want to be surprised. Surprises make for good horror and comedy, but not for a productive in-house career. If there is something that could prevent consummation of a business opportunity at the last minute, warn them early and often.

55. “I think of all the education that I missed, but then my homework was never quite like this!”
song, “Hot for Teacher,” 1984, *Van Halen* (Warner Bros. 1984)

You have to train your clients to be good clients; be creative how you do this and avoid condescension. A great way to train clients about contracts is to take the worst contract draft you have seen, doctor it to make it worse, and give it to your clients—whom you have divided into teams—as a competition to see which team can spot the most errors. One point for identifying the error and a bonus point for explaining why the clause is problematic. Treat the winning team to lunch. At the company that instituted this competition (at the annual sales kickoff), the teams took it very seriously, had fun, and referred back to the contest several times in the year after as we discussed real contract issues.

56. “I’m gonna get myself connected. I ain’t gonna go blind for the light which is reflected.”
song, “Connected,” *Connected, Stereo MCs* (Island, 1993)

Make an effort to stay in the loop. Don’t get so consumed by your own inbox that you neglect the important nonlegal issues facing the company, the big problems to solve, the worries and fears. At some point, some element of those issues will land on your desk. And make sure you reciprocate; identify the key stakeholders for a matter and keep

them in the loop about your big legal issues, worries, and fears.

57. “There are 178 parent languages on our planet with over 1,000 dialects. . . It’s amazing we communicate at all. . . Languages and dialects with this one thing in common: AEIOU sometimes Y.” song, “AEIOU Sometimes Y.” AEIOU Sometimes, Ebn Ozn (Electra Records 1984)

If your company is multinational, then you absolutely will have contact with people from different cultures. More often than not, due to time differences, this diplomacy will occur in written emails. Though languages and cultures are different, they share a few things in common: clearly written emails that eschew legalese (hint: don’t use the word “eschew,” even with Americans), bear some resemblance to formal business communication, and include some pleasantries, will get you far. Courtesy, clarity, and conciseness are universally appreciated in business correspondence.

58. “Please please tell me now, is there something I should know?”

song, “Is There Something I Should Know?” Duran Duran, *Duran Duran* (Capitol)

Don’t be afraid to ask questions. When a client comes to you with a problem, you may get a sense that there is something playing behind the scenes. Trust your instinct; don’t be afraid to ask them (or others) if there is something else going on.

**59. “99 red balloons
Floating in the summer sky
Panic bells it’s red alert
There’s something here from somewhere else.”** song, “99 Luftballons,” *99 Luftballons*, Nena (Sony, 1984)

Your clients may not start a nuclear war because they see some balloons floating in the sky, but they will overreact at times. When they do, you need to take them back down to Defcon One and get them focused on explaining and solving the problem, if there really is one. I find that, when appropriate, the best thing to do is tell a story from your experience to illustrate that there really is no problem.

60. “Do you hear me? Do you care? Do you hear me? Do you care? My lips are moving but no

sound is coming out. The words are audible but I have my doubts that you realize what has been said. You look at me as if you’re in a daze. It’s like the feeling at the end of the page when you realize you don’t know what you just read. What are words for? When no one listens anymore.”

song, “Words,” *Spring Session M, Missing Persons* (One Way Records Inc. 1982)

The worst assumption that you can make in-house is that your client has read the document. Most people assume “that’s the lawyer’s job.” While clients need not be reading late-payment, governing law, integration, notice, and other provisions, they should be reading relevant representations and warranties, indemnities, license grants, or statements of work. After you complete your review, close your memo with “as you read through this document, you may want to pay particular attention to Section X because . . .” Then assume they won’t read anything else but that section.

61. “What I really need is a droid that understands the binary language of moisture vaporators.” movie, *Star Wars* (Twentieth Century Fox 1977)

I know, I know, *Star Wars* was made in 1977, but everybody would agree that it was before its time. In any event, I challenge the reader to find any 80s quote with the word “binary” in it. The point is that just as Uncle Owen needed a droid who could speak a binary language, so do corporate executives. Clients want bottom-line options and recommendations; they don’t want a recitation of all the issues (*i.e.*, how smart you are to find so many interesting little issues in the contract!). Identify the available courses of action and present them succinctly to your client.

62. “When you came in here, didn’t you have a plan for getting me out?”

“He’s the brains, sweetheart.” movie, *Star Wars* (Twentieth Century Fox 1977)

Occasionally, after presenting a succinct binary choice, and despite your best efforts to sell option A, your client will pick option B, which may land you in the trash compactor. You’re the brains, sweetheart, so always have a back-up plan. This may mean doing what is necessary to keep option A open for when your client does see the light or it may mean mitigating all of the damage that you know will come under option B.

63. “Let me give you a little advice so you know. In times of economic uncertainty, never ever [mess] with another man’s livelihood. Go have fun now. You know fun, time of your life? Maybe if you follow that, I won’t have to come back here.”

movie, *Risky Business* (Warner Studios 1983)

“Guido, the killer pimp” may be able to give advice about his core business in the same line with general advice. You do not have that luxury. You can give legal advice—which is your core business—and you should give general business advice where relevant. You do not want to appear to overstep your authority and you want to be clear when you think something is both perfectly legal but plain stupid. When you give advice, make it very clear what part is legal advice and what part is business advice. If you want privilege to apply to the legal part, put it in a separate memorandum and mark it appropriately.

GETTING AHEAD

“Keep feeling fascination, looking, learning, moving on.”

song, “(Keep Feeling) Fascination,” *Best of the Human League, The Human League* (A&M 1983)

64. “I want my two dollars!”
movie, *Better Off Dead* (20th Century Fox 1985)

In the movie, this line is repeated by a zealous newspaper delivery boy attempting to collect on his route. He chases the debtor all over the ski slopes trying to get his money. You’re not in private practice anymore. On September 1, you will not be automatically promoted from “third-year associate” to “fourth-year associate,” and your pay will not ratchet up simultaneously with all of your peers. If you think you deserve it, don’t be afraid to ask for a raise.

65. “You know you’re missing out on something. Well, that something depends on you.”

song, “The Look of Love, Pt. 1” *The Lexicon of Love, ABC* (Polygram Records 1982)

Most legal departments do not have a Career Development Committee. You need to work with your bosses inside and outside the legal department

to make the most of your experience. And even before that, you have to think about what you really want to get out of your in-house career, because a good manager will ask you that precise question. The answer may be “I want to get more M&A experience,” or “I’d like to do anything but what I am doing now.” The important thing is to have a thoughtful answer that fits with your short- and long-term career development plans.

66. “Video killed the radio star.”
song, “Video Killed the Radio Star,” *Age of Plastic, The Buggles* (Polygram Records 1980)

Stay current with technology or go the way of the radio star. This includes mobile connectivity, email retention, electronic discovery, online data rooms, and automated contract management. The more you know technology, and the more your bosses know that you know technology, the more influence you will have in shaping your department’s technology resources. You also may get some cool gadgets out of the deal!

67. “I fought the law and the law won.”
song, “I Fought the Law,” *The Clash, The Clash* (Sony 1979)

At times in-house, for a number of reasons, you may be tempted to move over to the business side. Maybe it is for the money, maybe it is to be making the deals before the lawyers get involved, maybe it is just a need for change. Just be sure you know what you are giving up on the legal side before you make a rash move.

68. “Act like wherever you are, that’s the place to be. ‘Isn’t this great?’”
movie, *Fast Times at Ridgemont High* (Universal Studios 1982)

Venting and complaining is commonplace among law firm associates. Outside the law firm, it is much less prevalent. Innocent venting in a small law department may be perceived as a serious attitude problem. Similarly, in a law firm it was accepted for a case or deal team to bash its adversaries. In-house, as unreasonable as your opponents may be, they are also your company’s customers, and if you badmouth them to your client in sales, they will use your “hostile attitude” as a reason the deal fell apart. It is okay to point out concrete ways

in which your opponent is being unreasonable, but always do it in a civil manner, without getting personal, and frame it as a business issue.

69. “And if you find you don’t like my ways, well you can send me back in 30 days!”

song, “30 Days,” *Run D.M.C., Run D.M.C.* (Profile Records, Inc. 1984)

In-house, you generally don’t get the chance to see your new hires in action (at work and at the cocktail parties) as a summer associate. When I showed up to one of my first in-house interviews, I received (and passed) a *written test*, a horrible software license agreement in which I had to spot problematic provisions. As a candidate, know that in-house interviews are more difficult than law firm interviews. As a hiring manager, know that you must be creative in doing your due diligence to hire the right folks. Whether that involves a written test, a “case-interview” or dozens of behavioral questions is up to you, just be prepared to ask (or answer) tough questions. Talk to friends who have gone through business school or management consulting interviews for advice on non-traditional interviews.

70. “Because your kiss is on my list of the best things in life.”

song, “Kiss on My List,” *Hall & Oates* (RCA 1980)

Keep track of your accomplishments. If people start using tougher, behavioral in-house interviews, you will be asked to discuss how you resolved a contentious issue in a particular negotiation. If you have a running list of the parties, the subject matter, the date, the dollars, and noteworthy facts, you will be well-prepared to discuss your experiences.

71. “We are the ones who make a brighter day, so let’s start giving.”

song, “We Are the World,” (The Live Aid Concert), *USA for Africa* (Polygram Records 1985)

Most private firms have ample opportunity for pro bono projects—interesting cases for nonprofits, amnesty cases, legal aid clinics, etc. Most legal departments are too small to have a regular flow of pro bono work. Stay involved with pro bono through ACC, through your local bar association, or get involved in nonlegal pro bono through

your company. Painting a low-income housing project with that obnoxious salesman may be just the bonding experience you need to develop a good working relationship.

72. “I got lots of money, but it isn’t what I need. Gonna take more than a shot to get this poison out of me.”

song, “Bad Medicine,” *New Jersey, Bon Jovi* (Polygram Records 1988)

Remember that your in-house lawyers are motivated much more by challenging work than by money. If one of your lawyers is unhappy, it will probably take more than a raise to satisfy him or her professionally.

73. “I am the son and the heir of a shyness that is criminally vulgar.”

song, “How Soon Is Now?,” *The Smiths, The Smiths* (Warner Bros 1984)

Especially in a small law department, succession planning is important. Look at the organization chart for your department. Everybody in the department should be able to step up, down, or over in case of voluntary or involuntary turnover or illness/emergency. Know how you would access somebody’s working files and work email short-term. When a vacancy arises, let the department know as soon as possible how you will fill the spot long-term (promote from within or recruit from outside).

74. “The numbers all go to eleven....” “Oh, I see. And most amps go up to ten?” “Exactly....” “Why don’t you just make ten louder and make ten be the top number and make that a little louder?” “These go to eleven.”

movie, *This Is Spinal Tap* (Columbia Tristar 1984)

There is always room for improvement. You can always draft a better, shorter, more customer-friendly license agreement. You can always learn wages and hours laws for another country. You can always prepare for a smoother due diligence review. On a scale of 1 to 10, don’t be afraid to take it to 11.

CONCLUSION

“Party over, oops, out of time...”

song, “1999,” *1999, Prince* (Warner Bros. 1985)

75. “Relax! Don’t do it.”

song, “Relax,” *Welcome to the Pleasuredome, Frankie Goes to Hollywood (Island 1984)*

This is an easy one. Your new environment, your first offshoring contract, your first termination in Brazil, and your first Sarbanes-Oxley whistleblower report will all be stressful and exciting moments. None of them prevents you from taking a moment to relax before you tackle them.

76. “I’m working out most everyday and watching what I eat. They tell me that it’s good for me, but I don’t even care.”

song, “It’s Hip to Be Square,” *Fore! Huey Lewis and the News (Capitol 1986)*

All that time you used to spend at the printer or flying back from those depositions in Hartford? Use it wisely. Cook for your family, train for that marathon, or read the *Financial Times*.

77. “I don’t care where we go. I don’t care what we do. I don’t care, pretty baby, just take me with U.”

song, “Take Me With U,” *Purple Rain, Prince (Warner Bros. 1984)*

Don’t forget that none of this in-house stuff is as important as the ones you love.

78. “Ack!”

Common saying of Bloom County comic strip character Bill the Cat, authored by Berke Breathed

Just as Bill the Cat responded “Ack!” to everything, your initial response to an issue should be “ACC.”

79. “‘Never get involved in a land war in Asia’, but only slightly less well known is this: ‘Never go in against a Sicilian, when death is on the line.’”

movie, *The Princess Bride (MGM/UA Studios 1987)*

This is generally good advice, whatever your profession.

80. “Now whip it, into shape, shape it up, get straight, go forward, move ahead, try to detect it, it’s not to late, to whip it, whip it good.”

song, “Whip It,” *Are We Not Men? Devo (Warner Bros. 1980)*

If you only remember one thing from this article, remember the last few lines of the 80s classic “Whip

It.” It really sums up your obligations and opportunities as an in-house lawyer solving a corporation’s problems.



The author would like to dedicate this article to the memory of David Matthew Bonnot, a true friend, philosopher, musician, athlete and fellow aficionado of the 1980s:

“You can be the Captain and I will draw the chart, sailing into destiny, closer to the heart.”

song, “Closer to the Heart,” *Moving Pictures, Rush (Mercury/Universal 1977)*

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A Recipe for High-quality Work Life for In-house Counsel

THE FUNDAMENTAL DESIRE of human beings to find “joy in their work, rather than just having a job” was described 100 years ago by Russian playwright Maxim Gorky: “When work is a pleasure, life is a joy! When work is a duty, life is slavery.”¹ Although prestige and compensation once (perhaps) satisfied attorneys’ need for joy, the realities of our work lives today, together with the shifting values of our society, now motivate us to seek something different. The relationship between our inner selves and our work, described more recently as “the degree to which our work engages and nourishes our souls,” has become paramount.² Although the struggle for “work-life balance” affects all workers to some degree or another, we will focus here on how the issue affects in-house attorneys and law departments.

**By Teresa T. Kennedy,
Eva M. Kripalani, and
Elinora S. Mantovani**

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HOW WE GOT HERE

“Work-life balance” is a term that was not used much before the early 1990s. By then, several factors had contributed to changes in America’s workforce and workplaces that caused employees to become much more focused on the need to balance their professional and personal lives.

Perhaps the most significant factor has been the change from the traditional family model in which one parent worked and the other stayed home to raise the children. The number of households that are headed by a single working parent or in which both parents work has increased significantly over the past few decades. According to data collected by the U.S. Bureau of Labor Statistics, in 2001 approximately 65 percent of all U.S. families with children were either dual-income or single-parent families. In addition, Americans have tended toward starting families later in life, often when their careers are at their most demanding, and other responsibilities, such as the need to care for aging parents, begin to take more and more time.⁵

At the same time that these societal changes are increasing the demands on family life, other

forces—including economics and technology—are changing the way that we work in a manner that often imposes even greater demands on our time. By the 1990s, employers had become increasingly focused on improving the bottom line by increasing worker productivity, which meant that workers had to work harder to produce more work. There was a shift in focus from a manufacturing-based economy in which workers were expected to be on a 9-to-5 schedule to a service-based economy in which workers are expected to put in whatever time is necessary to get the job done. Technology, while making it easier for employees to get work done, also increased expectations about how quickly work could be done and made it easier to stay in touch with the office.

Originally, it was working women with children who put the issue of work-life balance on the national policy agenda. Although the issue is still important for working women, it is no longer just a women’s issue. Achieving work-life balance has become a concern for all workers, including couples without children, as well as single men and women who want to derive more enjoyment from their lives.

Although the issue is universal to all workers, many people still seem to believe that working mothers are held to higher standards than working fathers and are often criticized for being insufficiently committed, either as parents or as professionals. A variety of critics claim that women who are willing to sacrifice family needs to workplace demands may be lacking as mothers, while those women who request extended employment leaves or reduced schedules because of family responsibilities may be lacking as professionals.

Attorneys and law departments may be slow to recognize that work-life balance is not an issue unique to women. In fact, working fathers now constitute nearly 27 percent of single-parent households.⁴ Despite their growing numbers, many fathers feel that work-life balance programs, such as telecommuting or flextime, are intended only for working mothers. Male attorneys must address these perceptions within their departments if they choose to use work-life balance programs.

The desire to have more than a life at work was epitomized in a survey taken shortly after 9-11. More than 80 percent of the survey recipients expressed a desire to focus more mental energy and

physical activity in the areas of community involvement, personal fulfillment, and family time. Many of the victims of the 9-11 attacks were either at work or on their way to work at the time of their deaths, a fact that strengthened the feeling that work is not everything, according to the survey.⁵

WHAT ABOUT LAWYERS?

In the beginning, it was enough just to be a lawyer. Entry into the legal profession promised many rewards: an opportunity to pursue justice and equitable treatment of individuals in civil and criminal situations, a prestigious profession that was highly regarded and esteemed by society at large, and the benefits of top-level compensation and all of the amenities that come with a high salary.

MANY OF US WANT TIME, ENERGY, AN ETHICAL LIFESTYLE THAT HAS A PLACE FOR BOTH OUR WORK RESPONSIBILITIES AND OUR DUTIES TO OUR COMMUNITIES AND FAMILIES, FLEXIBILITY, AND, LAST BUT CERTAINLY NOT LEAST, THE ABILITY TO ENJOY OUR LIVES.

Over time, however, the image of lawyers has become tarnished. Top compensation hasn't come easily: the trade-offs have included high stress, long hours, and limited time and energy for personal lives, community involvement, and family interests. The focus on billable hours and lean staffing has often resulted in monotonous, mind-numbing work. The lofty aspirations that many attorneys brought to their swearing-in ceremonies have often crashed in the hard reality of day-to-day legal practice.

These trade-offs often result in a wide array of damaging side effects. Attorneys struggling with stress, exhaustion, and disillusionment sometimes turn to alcohol and other forms of substance abuse to escape these pressures. Depression has become a common issue. In fact, some studies have indicated that attorneys may be among the unhappiest of professionals. Attorney burnout has become a common

phenomenon, sometimes resulting (either voluntarily or involuntarily) in a decision to leave the profession entirely.

For attorneys, the increased focus on quality of life has been described as a push back against the negatives in our profession (long hours, excessive client demands, and aggressive and competitive adversaries and colleagues) in favor of a more "ethical life." This ethical existence includes time and energy to devote to responsibilities both inside and outside the office to family, friends, community, and self.⁶ The bottom line is that many attorneys have begun to seek two things that will dramatically improve their quality of life: balance and time.

WHAT CAN LAWYERS DO?

Many of us want time, energy, an ethical lifestyle that has a place for both our work responsibilities and our duties to our communities and families, flexibility, and, last but certainly not least, the ability to enjoy our lives. How can we as attorneys find this idyllic combination? The answer lies in actively pursuing a flexible approach to our work lives and our personal lives. The first step is to take a reflective look at ourselves.

STEP 1. Conduct a "Personal 360"

Although this first step—a comprehensive assessment of our goals, desires, and what makes us happy—may sound easy, many of us attorneys find that taking such a personal inventory can be particularly difficult. Our professional and cultural imperative to be outstanding service providers—driven to anticipate, safeguard, and care for the needs of our clients—makes an introspective look at our own needs particularly difficult. The starting place for conducting this personal survey is similar to the phenomenon captured by the 9-11 syndrome: asking ourselves what we would most like to accomplish by the end of our lives or, in the alternative, what we would most regret not having done or become. Honest answers to these questions are not easy. Each of us must take the time to make an honest assessment of the things that are important to us and the things that, if lacking, create a deficit in our lives. Through this process, we engage in a "Personal 360": identifying, quantifying, and ranking the activities,

aspirations, values, and goals that nourish our souls and contribute to personal fulfillment.

Unlike the traditional calculus of “work-life balance,” this approach does not focus on the number of hours worked, nor does it isolate parents or women. Rather, this approach recognizes that the quality of our work lives and the quality of our personal lives are inextricably intertwined. By identifying the activities that bring us energy, fulfillment, and joy, we can take the necessary steps to find practical means of achieving these goals.

Start your Personal 360 process by asking yourself the following questions:⁷

- What makes me happy?
- What energizes me?
- What am I good at that I also enjoy doing?
- What are my individual strengths?
- What do I wish I could learn to do?
- What is my dream job?
- What is my dream hobby?
- What is my dream life style?

STEP 2. Develop Your Self-care Plan

In addition to your Personal 360, an essential step in creating your personalized recipe for work-life balance is a recognition that taking care of yourself is probably the most important ingredient. Self-care involves a number of elements. Some are common to all of us; others must be custom tailored. The following are essential elements for any self-care plan:⁸

- **Exercise.** Study after study demonstrates the importance of exercise in reducing stress, warding off illness, maintaining energy and optimism, and generally promoting good physical and mental health. Recent studies have found that exercise done in spurts (when a busy schedule does not permit a long workout) is in fact valuable and should not be overlooked. The “Real Age”⁹ service has observed that engaging in regular exercise can make your “real age” (as opposed to your chronological age) as much as nine years younger.
- **Nutrition.** Our mothers weren’t wrong when they told us that “you are what you eat.” The stress of our busy professional and private lives continually lures us farther and farther away from sound eating habits. The high-fat, low-nutrient substitutes for home-cooked meals take their toll in weight gain, lowered immune systems, reduced

energy, and susceptibility to illness. Each self-care plan must include a serious look at diet and the practical means to ensure that our bodies are well-nourished.

- **Emotional well-being.** In addition to feeding our bodies, feeding our minds and spirits is a top priority. Personal and professional stress results in lost opportunities for deep, fulfilling, personal relationships. The rat-race mentality also limits our ability to engage in activities that we may have pursued at other times of our lives and somehow lost along the way, such as sports, hobbies, cultural pursuits, and volunteer work. Our inward reflection should answer the basic question, “What makes me happy?” It is essential that your self-care plan include time to pursue this happiness. Again, referring to your “real age” calculation, studies indicate that taking good care of your emotional self can make your “real age” as much as 16 years younger than your actual, physical age.

Your Personal 360 will list goals, values, and activities that are important to your quality of life. Equally important, your self-care plan must include the means necessary to enjoy the areas that are essential for you, such as the following, for example:

- **Professional fulfillment.** If your Personal 360 shows that such activities as community involvement, pro bono legal service, legal training, legal writing, or involvement in professional associations add quality to your work life, consider strategies to incorporate them into your job description. Negotiate with your boss by pointing out the value to your company—in terms of good will, increased visibility, and positive image—that comes from having an employee involved in these sorts of activities. Also, point out the subjective (but very real) value that the company reaps from having an attorney who continues to be energized and fulfilled by his or her work life.
- **Personal fulfillment.** If your Personal 360 tells you that involvement in such activities as the education of your children, the care of your parents, activities at your place of worship, community service work, sports activities, or mentoring is important, make a plan to incorporate these activities into your personal life. Because, for many of us, our lives are controlled by our to-do lists, make sure that the activities that are essen-

tial to your personal fulfillment have a place on your list.

STEP 3. “Create” Time

One of the most effective ways to reduce stress and to implement your self-care plan in both your personal and your professional life is to find time in your day. The need for more available time is pervasive: responsibilities often increase while the number of hours in the day remains constant. Taking a practical approach to creating time can often make or break a self-care plan. To create time out of thin air, consider the following strategies:¹⁰

- **Get organized:**
 - Create a loose-leaf, alphabetical notebook to hold all of your important information, both business and personal. For example, list all doctors under “D,” all favorite take-out restaurants under “R,” and babysitters under “B.” Update these materials often and discard any pages that you have not used in the past six months.
 - Under a tab in that same loose-leaf notebook, keep a current membership roster for all groups that you and your family belong to. When your membership or participation in a group ends, discard that roster.
 - Another tab in that notebook should include a hard copy of all of your email address books and important information, such as driver’s license numbers, Social Security numbers, insurance policy numbers, and the like, for you, your spouse, your children, and your parents.
 - Get rid of clutter at home, in your office, and in your computer. If you know that you are a pack rat, that you can’t find things that you need when you need them, and that you have no idea how to begin to tackle that problem in your personal and business life, then get help. For example, go to FlyLady.net for free information and support that will help you achieve this goal.
- **Tame errands:**
 - Decide what day of the week will be your errand day. Make a list of errands to do each week on that day. Consolidate your errands to save time and travel.
 - Keep an “errand basket” handy to collect various errands that you must address. Plot a route that efficiently moves you from one location to the other. Then pick up your errand basket and go.

- Never make a personal trip when an email order, mail-in order, or phone call will get the job done.
- Consider tending to errands and shopping in off-hours to beat the crowds.

Be prepared:

- Ready yourself for special occasions that call for you to write a note, such as birthdays, anniversaries, thank-you’s, and congratulatory messages, by stockpiling greeting cards in all of these categories.
- Keep a gift closet packed with a wide assortment of gifts appropriate for any occasion (don’t forget to label the outside of the gift with details about size, color, price, date purchased, and so on, or you could end up giving your favorite aunt the same blue sweater three years in a row).
- Don’t just note birthdays, anniversaries, and other important dates on your calendar. Instead, mark a few days before each of these events so that you will have time to mail your gift, card, or letter.
- Do your holiday shopping in October or earlier.
- **Be realistic:**
 - Directly address high stress times, such as holidays, heavy travel schedules, or project deadlines. Don’t let these issues take on a life of their own; instead, write down the deadlines, develop a game plan, and encourage yourself to feel more in control.
 - Break major tasks into smaller, achievable bits and pieces. Give yourself a pat on the back as you check off each of these bits as a mission accomplished.
 - Give yourself a break by hiring occasional outside support. A one-time housecleaner, yard worker, or babysitter can create time for you and reduce stress at the same time. Consider hiring a neighbor’s son or daughter or a student at a local college or university to run errands, address envelopes, rake the yard, and so on.

WHAT CAN LAW DEPARTMENTS DO?

Although not all employers have supported workers’ desires to achieve work-life balance, some employers have become increasingly aware of the

bottom-line benefits that result from helping employees achieve work-life balance. Many studies support the conclusion that the high employee morale resulting from work-life productivity programs is linked to outstanding financial performance and increased productivity among the companies listed as the “100 Best Places to Work”—the “employer of choice” phenomenon.¹¹ For example, after First Tennessee National Corporation had addressed work-life balance issues as a strategic business initiative, advances in customer service ratings and productivity occurred, as well as increased retention rates among both employees and customers. Significantly, these benefits translated into increased profits.¹²

THE PERSONAL CHARACTERISTICS OF PEOPLE WHO CHOOSE TO BECOME ATTORNEYS OFTEN CONTRIBUTE TO THE STRUGGLE TO ACHIEVE WORK-LIFE BALANCE. WE LAWYERS TEND TO BE COMPETITIVE AND AMBITIOUS AND SOMETIMES IMPOSE UNREALISTIC DEMANDS ON OURSELVES.

The factors used to consider whether a corporation is an “employer of choice” can be applied to law departments, as well:¹³

- **Law department reputation.** A law department that is synonymous with quality will attract top-quality attorneys for whom work-life balance is a priority.
- **Quality of department operations.** Attorneys want to remain with and be an active part of a law department that is run intelligently and with concern for their needs.
- **Good management.** Attorneys working for managers who promote their welfare in such areas as work-life balance tend to perform more productively, contributing to the success of the company.
- **Employee satisfaction.** The top five needs for employees, including in-house attorneys, are pride in their company and work, meaningful work, personal and professional respect, sincere expressions of appreciation, and the ability to

exercise autonomy and control in their jobs.

Unfortunately, many law departments are not structured to facilitate work-life balance, as demonstrated by some disturbing recent survey results. Two-thirds of lawyers report experiencing work/family conflict, and many believe that the dilemma of finding the right work-life balance is the greatest barrier to women’s advancement in the legal profession. Only a small number of lawyers report being satisfied with the allocation of time in their lives between work and personal needs or with their opportunities to contribute to community and social issues. This concern echoes the desire of professionals in general to “do good works” as part of their definition of the overall quality of life.¹⁴

Traditional aspects of the practice of law also contribute to the difficulty in achieving work-life balance. Those demands include unpredictable deadlines, uneven workloads, and frequent travel. In addition, client expectations of instant responsiveness and 24/7 availability also contribute to increased work stress. Finally, many law department managers and clients continue to view long hours as the most important measure of the qualities considered necessary for advancement, such as commitment, ambition, and reliability under pressure. Recent economic conditions have only made the situation more difficult by shifting the balance of power: there are far more lawyers looking for jobs than there are positions to be filled. This situation has resulted in a shift in employer attitudes that has meant the loss of some of the progress made toward work-life balance in the past few years.

The personal characteristics of people who choose to become attorneys often contribute to the struggle to achieve work-life balance. We lawyers tend to be competitive and ambitious and sometimes impose unrealistic demands on ourselves. We constantly struggle with being a part of and trying to control the rat race of our lives and often display extreme stress and dissatisfaction. To make matters worse, stressed-out lawyers often believe themselves to be in workplaces that will not permit them to achieve better work-life balance. This behavior often leads to tensions with other employees, as “rat race” lawyers often resent colleagues who value work-life balance over career advancement and feel that these employees are not carrying their fair share of the load.¹⁵

*From this point on . . .
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- *Affinity Groups: Parent Networking Groups*, July 2002, available at www.generalcounselroundtable.com.
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Create Work-life Balance Programs

The good news is that options exist for achieving a satisfying balance between professional and personal obligations. Many law departments and other employers offer tools for translating a wish list for fulfillment into a flexible and balanced work and personal life. Employers often see work-life balance as an opportunity to create services or benefits for employees to enable them to successfully juggle their varying responsibilities. The services may include support with childcare and elder care, “lunch and learn” seminars, financial education, and medical, legal, and other professional support services. Similarly, employees seeking to obtain work-life balance will gravitate toward employers who encourage employees to have a life outside the office and offer methods for helping employees meet their responsibilities.

EMPLOYERS OFTEN SEE WORK-LIFE BALANCE AS AN OPPORTUNITY TO CREATE SERVICES OR BENEFITS FOR EMPLOYEES TO ENABLE THEM TO SUCCESSFULLY JUGGLE THEIR VARYING RESPONSIBILITIES.

These programs are helpful—in fact, essential—in obtaining professional and personal fulfillment. Developing, assessing, and using these programs represent not an end in themselves, but the means to help each of us get to the goal that we have identified through our Personal 360: creating our own recipe for an ideal life.

Studies have also shown that, in evaluating potential employers, jobseekers are increasingly focusing on intangible benefits in deciding where to work.¹⁶ These intangible benefits include higher levels of job satisfaction, increased commitment to the success of the company, greater sense of loyalty, and a decrease in “negative spillover” between work and personal life.

The steps that a law department can take to implement a work-life balance program are essentially the same that an individual attorney would take, examine, create, and implement:

- **Perform an internal study.** Use information-gathering tools to determine which work-life benefits and programs law department employees would find most useful. Often, companies hire an outside consultant to conduct the assessment, using guidelines provided by management. Teams within the law department should be encouraged to analyze and redesign their own work practices.¹⁷
- **Describe the desired outcome(s).** Law department management should determine the objectives of their work-life balance programs. Possible objectives or desired outcomes could include encouraging employees to “go the extra mile” or increasing innovation, productivity, and loyalty.
- **Develop guiding principles.** In setting up its work-life balance programs, PriceWaterhouseCoopers established several important principles: employees are different; the meaning of work-life balance varies throughout an individual’s life; individuals must take responsibility for their own work-life balance; the firm seeks to achieve the optimum balance between business and individual needs; managers need support in helping their teams work flexibly; and the quality of work output is more important than the number of hours worked.¹⁸

Support Work-life Balance Programs and the People Who Choose to Use Them

Supporting work-life balance programs and the people in the law department who choose to use them will help both the law department and the company that the law department serves. The effects on law departments of attorneys who are suffering from a lack of work-life balance are evident in many ways. Physically and mentally exhausted attorneys are underproductive, more likely to produce mediocre work, and frequently lack creativity and attention to detail. This burnout can lead to a perception that certain lawyers lack the necessary “team player” mentality. Worn-out lawyers lack the camaraderie, high energy, and personal commitment that are the hallmarks of successful law departments and can’t develop positive relationships inside or outside of the department. Professional burnout may eventually cause the company to lose talented attorneys in whom the company has invested training, money, and time.¹⁹

Many companies and in-house law departments have begun implementing various types of work-life balance programs to attract and retain qualified attorneys, improve morale, reduce stress, remain competitive, cut absenteeism, and maintain good public relations. Work-life balance programs can be structural (flexible schedules, reduced hours, or telecommuting), pragmatic (addressing the need for increased childcare and eldercare), or educational (employee assistance programs, workshops, and seminars on work-life balance and wellness or fitness programs). Other types of programs can focus on or include career counseling or peer group mentoring. Likewise, programs can focus on training management to respond to the work-life balance needs of their staff.²⁰

LAW DEPARTMENT MANAGEMENT SHOULD BE AWARE, HOWEVER, THAT REQUIRING LONG HOURS AND CONSTANT AVAILABILITY DOES NOT NECESSARILY RESULT IN OPTIMUM LEGAL WORK OR THE IMPROVEMENT OF LEGAL SKILLS.

Telecommuting is an example of a structural program that is particularly suitable to attorneys because much legal work can be done anywhere, but resistance to telecommuting is not uncommon because of perceptions by companies, law departments, and attorneys themselves.²¹ See the sidebar on page 52 for the elements of a successful telecommuting program and the characteristics of successful participants in such a program.

Programs providing childcare assistance promote increased loyalty and productivity among employees. Convenient, affordable childcare and schools are indispensable elements for working parents. Without adequate child care, many parents are unable to move past the guilt of not personally caring for their child themselves. Families in the United States pay about 8.7 percent of their income for child care, and the costs continue to rise.²² Employer-sponsored child care programs can pro-

vide monetary assistance to employees for child care; in some cases, the employee can decide which child-care provider to use and present the receipt for full or partial reimbursement. Onsite childcare has also proven to be a powerful tool for attracting and retaining employees, as well as lowering absenteeism. (According to the Children's Defense Fund, U.S. employers record about \$3 billion annually in losses from absenteeism.) Several years ago, Turner Networks created an onsite day care center and also began a scholarship fund for employees who needed financial assistance. The law firm of Alston & Bird offers onsite day care for its employees' children and has reaped significant benefits from this work-life balance program through glowing evaluations and rankings as an exceptional employer.²³

Employee education and training are also essential to the success of a work-life balance program. Educational programs typically have two goals: to reach out to employees struggling with work-life balance issues and to provide practical solutions. For example, PriceWaterhouseCoopers' work-life balance programs are well communicated to employees, resulting in the following recently reported benefits: greater staff satisfaction (60 percent of employees said that they were satisfied with their work-life balance, compared to 40 percent in 1999); improved staff retention (an increase in return rate from maternity leave from 40 percent in 1998 to 80 percent in 2002); and changing attitudes (an increasing acceptance of flexible work arrangements, including working from home and flextime, which promotes a greater sense of trust between managers and staff and a greater sense of personal control for individuals).²⁴ A particularly innovative aspect of the company's employee education plan involves a work-life balance intranet site, launched in 2001 and developed with assistance from specialists in the field of work-life balance. The site provides practical advice, support, and tools to help staff juggle commitments at and away from work, including information on pregnancy, childbirth, parenting, eldercare, relationship management, stress, time management, nutrition, and health.

Peer and support groups offer another means to promote life-work balance.²⁵ Research shows that, although many companies have affinity or employee resource groups in place, relatively few have groups specifically focused on work-life balance issues.

Attorney support or peer groups can contribute to a law department's success and work-life balance by creating a positive work environment within the law department, enabling staff to share viewpoints on department projects and policies that result in time savings and a sense of cohesiveness and teamwork. These support groups offer attorneys distinct benefits, such as (1) a community where issues and problems about work-life balance can be discussed and solved, (2) free, open networking and sharing of job opportunities and challenges, (3) solid professional development through mentoring relationships, and (4) a safe environment in which to discuss the emotional issues that go with an unbalanced life and techniques to address the lack of balance.

Creative solutions addressing lack of work-life balance are becoming more popular. Home and Garden Television ("HGTV"), for example, has an arrangement with a local rental car company to make business travel more convenient for employees. The rental car company delivers and picks up the cars at company headquarters, which saves employees travel time. HGTV also has different caterers that come to headquarters during the lunch hour for employees who wish to stay near the office during the lunch period. As another example, PBS provides a chair massage therapist who comes to the office three times a month, providing 15-minute massages. Employees pay about half of the cost for two of the days and most of the cost on the third day. Cox Communications provides a "personal assistant," whom employees may hire to run errands, shop, assist with children's birthday parties, and manage similar activities.²⁶ PriceWaterhouseCoopers is examining the innovative concept of providing "career breaks."²⁷

TELECOMMUTING

WHAT A SUCCESSFUL TELECOMMUTING PROGRAM NEEDS

- Strong upper management support.
- Comprehensive guidelines.
- Training for program participants, managers, and other employees.
- Willingness to move away from traditional management hierarchy.
- Strong technological/technical support.¹

WHAT SUCCESSFUL TELECOMMUTING PROGRAM PARTICIPANTS NEED

- Right attitude: independence coupled with professional commitment to business needs.
- Right priorities: customer and client service.
- Self-discipline: essential to deal with less structure and more freedom and to keep distractions from interfering with quantity and quality of work.
- Flexibility: necessary for balancing work and personal life when the two are no longer defined by separate locations.
- Strong self-motivation: an essential tool for success.²

NOTES

1. Nicole Belson Goluboff, *An Alternative Work Arrangement That Really Works*, THE COMPLETE LAWYER 28 (Spring 1996).
2. *Id.*

OVERCOMING OBSTACLES TO WORK-LIFE BALANCE PROGRAMS

Many attorneys believe that using work-life balance programs may hinder their chances for career advancement. Other attorneys point to actual or perceived experiences of marginalization, slower advancement, or work/family conflicts within their department's organization. In many law departments, which are service organizations, the perception still exists that working long hours demonstrates commitment and quality. Law department management should be aware, however, that requiring long hours and constant availability does not necessarily result in optimum legal work or the improvement of legal skills.

Suggestions for Law Departments

In some law departments, open communication of information on work-life balance is a significant challenge. Open and clear communication from law department management on this issue, including assurances that there will not be a stigma attached to attorneys who take advantage of these programs, is a critical factor in ensuring that work-life balance programs are actually used.²⁸

Another significant challenge is conducting the needs assessment. Department management must ensure that a representative cross-section of the law department's attorneys participates and must select a manager who demonstrates openness and impartiality to facilitate the assessment process. In assessing needs, law department management should be sensitive to differences among attorneys in such areas as perspectives on personal commitment, individual needs for different rewards, and differing levels of flexibility and tolerance for change.

To attract and retain talented attorneys, law departments need to evaluate their own corporate culture. Implementing work-life balance programs will not be enough; law departments need to create workplaces where attorneys have the full support of supervisors and corporate executives to use these programs. Law departments should also conduct a business analysis that assesses the costs and benefits of providing work-life balance against the risks of losing skilled attorneys to other employers. Finally, law departments should thoroughly assess their attorneys' needs through employee surveys and focus groups or other means that will collect necessary information. After law departments have come to understand their attorneys' needs, management can then create appropriate work-life balance programs. For example, if attorneys identify telecommuting as an appropriate program, management should consider whether a structured, formal program best suits the company culture or whether the program would function best as an informal practice. In either situation, management should develop criteria to select the best candidates, to anticipate and address client concerns, and to effectively educate all involved.

Law departments with established work-life balance programs should question whether their attorneys really use these programs when offered. If not, management should find out why. To promote effective work-life balance in a law department, management should encourage attorneys to discuss the programs that would facilitate balance and the reasons why they might be reluctant to use these programs. Management should also assess whether attorneys' use of these programs does in fact have a negative effect on perceptions and career advancement.

Suggestions for Attorneys

Attorneys who take advantage of alternate work arrangements that reduce "face time" with supervisors, such as reduced hours or telecommuting, must actively take steps to counteract the perception that they lack commitment, drive, and ambition. For example, attorneys who want to telecommute should explain to their managers how working at home benefits not only the attorney (better morale) but also

TO ATTRACT AND RETAIN TALENTED ATTORNEYS, LAW DEPARTMENTS NEED TO EVALUATE THEIR OWN CORPORATE CULTURE. IMPLEMENTING WORK-LIFE BALANCE PROGRAMS WILL NOT BE ENOUGH; LAW DEPARTMENTS NEED TO CREATE WORKPLACES WHERE ATTORNEYS HAVE THE FULL SUPPORT OF SUPERVISORS AND CORPORATE EXECUTIVES TO USE THESE PROGRAMS.

the department (better work product). Additional steps to demonstrate commitment to the law department and its clients could include the following:

- Update management regularly (both in writing and in person) on the efficiencies realized through use of a work-life balance program.
- Demonstrate flexibility by agreeing to attend meetings in person or to work at the office when the needs of the business require it.
- Remain a visible, active member of the team, attend lunches and social gatherings, and volunteer for committees and task forces.
- Speak up if you believe that your participation in a work-life balance program is perceived as a lack of commitment on your part or a failure to produce the same outputs as you would under a traditional work schedule.
- Realize that attorneys are by nature risk adverse and sometimes slow to change.

CONCLUSION

It is clear that work-life balance is a critical issue for attorneys: law departments that facilitate that balance reap significant rewards. Many programs are available to promote work-life balance; unfortunately, many obstacles to the actual use of these benefits also exist. Both attorneys and their employers can overcome these obstacles if they keep two important principles about work-life balance in mind: (1) flexibility and a willingness to create and experiment with innovative programs are critical; and (2) open communication about policies, perceptions, concerns, and objections is an integral part of creating and implementing work-life balance programs.

Work-life balance is really all about time: the persistent shortage of time, a continuing need to find more time, and the struggle to best allocate the time that each of us has. This issue is sometimes labeled "time sovereignty,"²⁹ the ability to exercise at least some control over this limited resource, and it lies at the heart of the desire for work-life balance.

After you have created your Personal 360 and self-care plan, analyzed programs that your employer does or might offer to assist you, and created some additional time in your packed schedule, you will be ready to create your masterpiece: a fulfilling life that incorporates what most inspires and motivates you both inside and outside the office, fills you with energy, and produces great satisfaction, both personal and professional. ■

NOTES

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3. Bureau of Labor Statistics, U.S. Department of Labor, <http://stats.bls.gov/newsreels.htm>, available at www.workfamily.com
4. Deborah L. Rhode, *The Unfinished Agenda: Women and the Legal Profession*, ABA COMMISSION ON WOMEN IN THE LEGAL PROFESSION 17 (2001), available at www.abanet.org/ftp/pub/women/unfinishedagenda.pdf (last accessed July 29, 2003).
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21. Ellen B. Barker, *Law Firms Are Adding New Benefits, Such as Parental Leave, Telecommuting and Alternative Work Schedules, But Not All of These Are Catching On*, *LEGAL TIMES* (Dec. 14, 1998).
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26. *Benefits of Balance: Increasing Employee Productivity through Work/Life Programs*, WOMEN IN CABLE & COMMUNICATIONS FOUNDATION 19 (1999).
27. See Employers for Work Life Balance, *supra* note 24.
28. *Id.*
29. *Id.*