



203 Meeting the Challenges of Practicing in a Small Law Department

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Mettler-Toledo International Inc.

Therese M. Catanzariti
General Counsel
Hantro Products Oy

Sally March
Former Head of Legal
Siemens Business Services Media

Faculty Biographies

James T. Bellerjeau

Mr. Bellerjeau is general counsel and secretary of Mettler-Toledo International Inc., headquartered in Greifensee, Switzerland. Mettler-Toledo is the world's largest manufacturer and marketer of weighing instruments for use in laboratory, industrial and food retailing applications.

Prior to joining Mettler-Toledo, Mr. Bellerjeau worked at the law firms Cleary, Gottlieb, Steen & Hamilton in Frankfurt, Germany, and Fried, Frank, Harris, Shriver & Jacobson in New York City. His practice included securities, structured finance, mergers & acquisitions, and corporate law.

Mr. Bellerjeau is member of the Board of Director's of ACC's European chapter, as well as a country representative for that organization. He also serves on the legal committee of the Swiss American Chamber of Commerce.

Mr. Bellerjeau received a B.A. from Clark University, a J.D. from Albany Law School, and an MBA from Rensselaer Polytechnic Institute.

Therese M. Catanzariti

Therese Catanzariti is legal counsel at Hantro Products Oy, a high-tech Finnish SME specializing in audio codec's, video codec's and multi-media applications.

Prior to joining Hantro, she was a legal counsel at Nokia in Finland. In Australia, she clerked for Justice Hill in the Federal Court, was a senior associate in IP/IT in the Sydney office of national Australian law firm Mallesons Stephen Jaques and was then a barrister at the NSW Bar specializing in IP and tax. Therese also lectured the course "industrial and intellectual property rights" at the University of Technology, and co-lectured the course on the SAB at the University of Sydney. She also gave occasional lectures at the Australian Film Television and Radio School and was a member of the IP committee of the Screen Producers Association of Australia. While in Finland, she lectured "Introduction to Entertainment Law" at the University of Oulu. She has written many papers in the area of IP and entertainment law.

Therese graduated with a BEC and LLB (Hons1) from the University of Sydney and LLM (Merit) from the University of London.

Sally March

Ms March went in-house in early 2000 with a California-based media technology company and became Head of Legal for BBC Technology, a group of subsidiaries of the British Broadcasting Corporation, which were acquired by Siemens. She led a team of lawyers and an intellectual property adviser. After seeing her small in-house team successfully integrated with the Siemens UK legal department, Ms. March left to pursue new ventures and is currently developing a consultancy for early-stage companies who cannot afford full-time in-house counsel.

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Prior to going in-house, Ms. March focused on the former Soviet Union, advising multinational investors and the Governments of Russia and Kazakhstan. She was the managing partner of the Moscow and St. Petersburg offices of Pepper, Hamilton.

She is a graduate of the University of California – Hastings College of Law and holds an LL.M. from the London School of Economics.

203 – Meeting the Challenges of Practicing in a Small Law Department: Legal Strategy

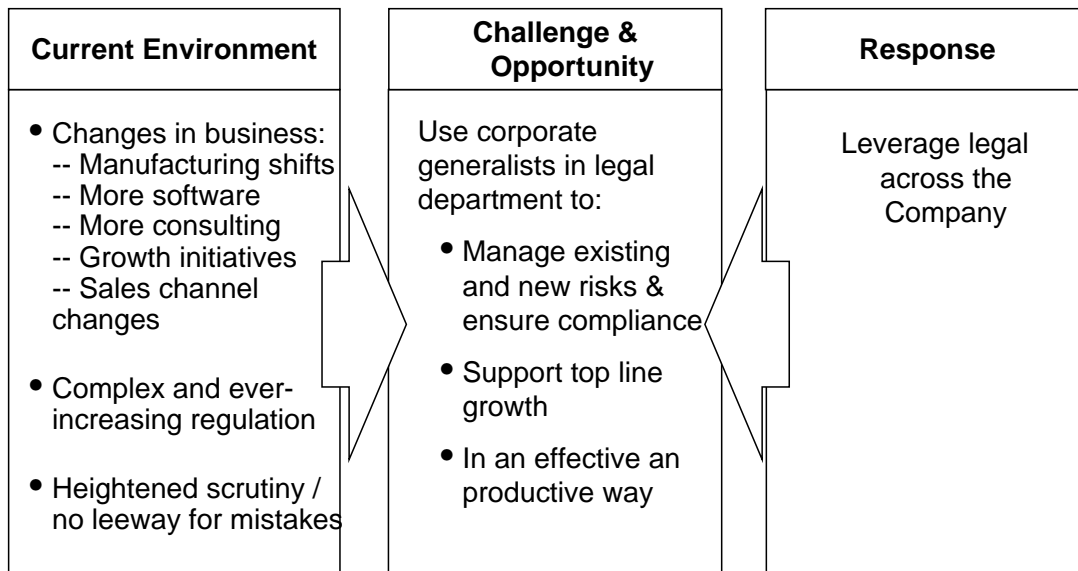
James Bellerjeau

Agenda

Using Legal Strategy to Maximize Effectiveness

- Situation Analysis
- Mission Statement
- Being Effective
- Knowing What You Do
- Knowing What You Should Do
- Reality Check – External & Internal
- Law Department Structure & Staffing
- In-House vs. Outside Counsel

Situation Analysis



Mission Statement

Legal Risk Management / Compliance

- Address legal risks in our everyday activities
- Consider where we're facing new legal risks
- Find ways to share lessons learned efficiently across Company

Support Top-Line Growth

- Service the existing core business efficiently
- Think about how to protect the future business

Operational Execution / Productivity

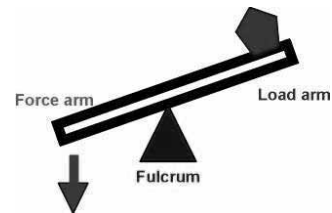
- Make sure Company knows how legal supports them
- Execute, with an emphasis on productivity and cost

Add value to Company – directly support Company's goals

Mission – Archimedes' Lever

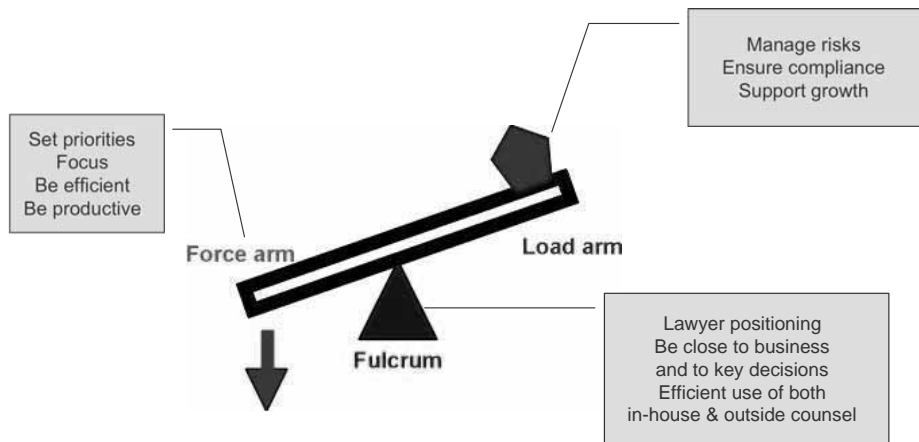
Why Archimedes

- Archimedes (ca. 287 BC–212 BC) was a Greek mathematician, astronomer, philosopher, physicist and engineer
 - Considered one of the greatest mathematicians of all time – among other things, he discovered pi
- You can increase leverage by (a) applying more effort, (b) moving the fulcrum closer to the load, or (c) extending the length of the lever
 - Resources are limited – adding people or putting in more effort is not practical
 - This means we need to make sure we are properly positioned inside Company, and
 - That we leverage our efforts for maximum effect



We must set the right priorities – and then focus on them

Mission – Archimedes' Lever



*"Give me a lever long enough,
a place to stand,
and I shall move the world."
Archimedes*

Being Effective

Think About What We Do

- **Know where your time goes & manage it**
 - Record your time
 - Manage your time
 - Consolidate time into manageable blocks
 - Systematically manage the time under your control

- **Identify things that should not be done at all**
 - Ask "What would happen if this were not done at all?"
 - Learn to say "no" if an activity contributes nothing to you or to MT
 - If we were not already doing this activity, would we choose to do it?
 - Which of our activities could be done by somebody else just as well, if not better?

Prioritize on Greatest Contribution

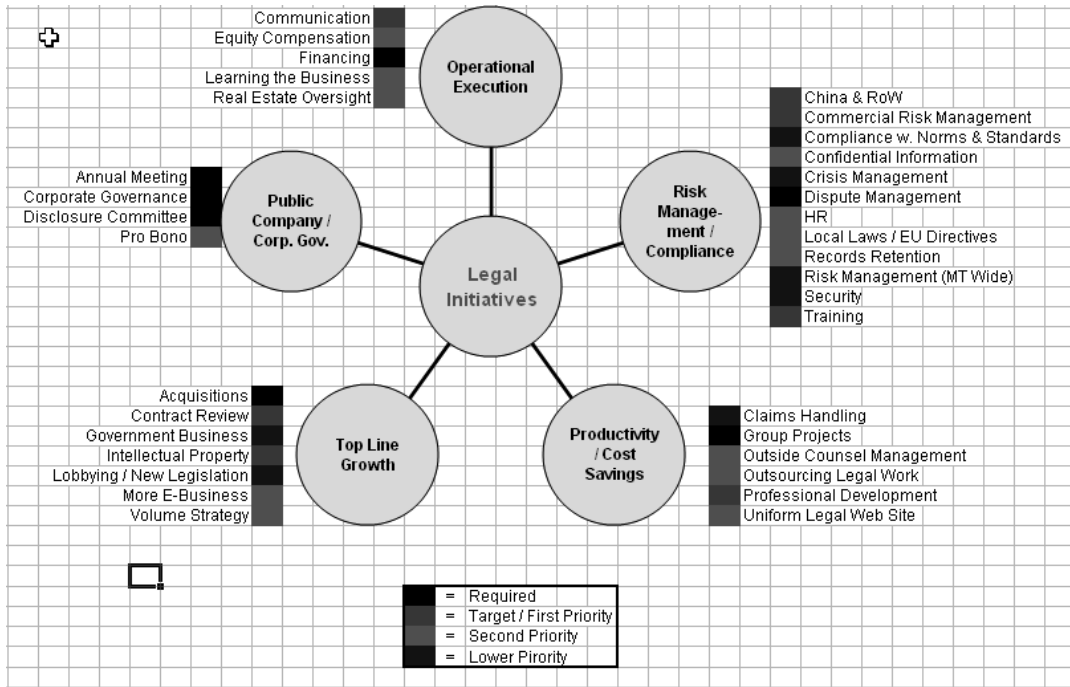
- **Focus on outward contribution**

- Focus on results rather than work
- "What can I contribute that will significantly affect the performance and the results of MT?"
- "What can I and no one else do which, if done really well, would make a real difference to MT?"

- **Decision criteria**

- Management attention / alignment with MT goals
- \$ value / risk of loss
- Long-term protection of MT (as opposed to individual unit, manager)

Knowing What You Do



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Knowing What You Should Do

NARROW LEGAL'S FOCUS TO HIGHEST-IMPACT ACTIVITIES

Opportunity Costs Require In-House Attorneys to Carefully Select Work Performed


—CASE IN POINT #1:—
OUTSIDE COUNSEL MANAGEMENT



Problem: In-house counsel typically spend one-quarter of their time managing outside counsel. While important, this activity fails to leverage in-house attorney's legal knowledge.

Solution: In-house counsel must evaluate which tasks require attorney judgment and automate or delegate other work. Legal departments should also consider leveraging the procurement function's expertise.

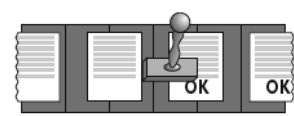
—CASE IN POINT #2:—
QUASI-LEGAL CLIENT WORK



Problem: Because in-house counsel are service-oriented and business clients recognize that attorneys are highly capable, clients frequently ask attorneys to perform low-value legal (and non-legal) work.

Solution: Legal functions must clearly communicate to business clients which types of work legal staff will perform.

—CASE IN POINT #3:—
ROUTINE LEGAL WORK



Problem: In-house counsel perform much of the corporation's routine work instead of outside counsel, despite the fact that in-house counsel's business knowledge uniquely positions them to perform complex legal work.

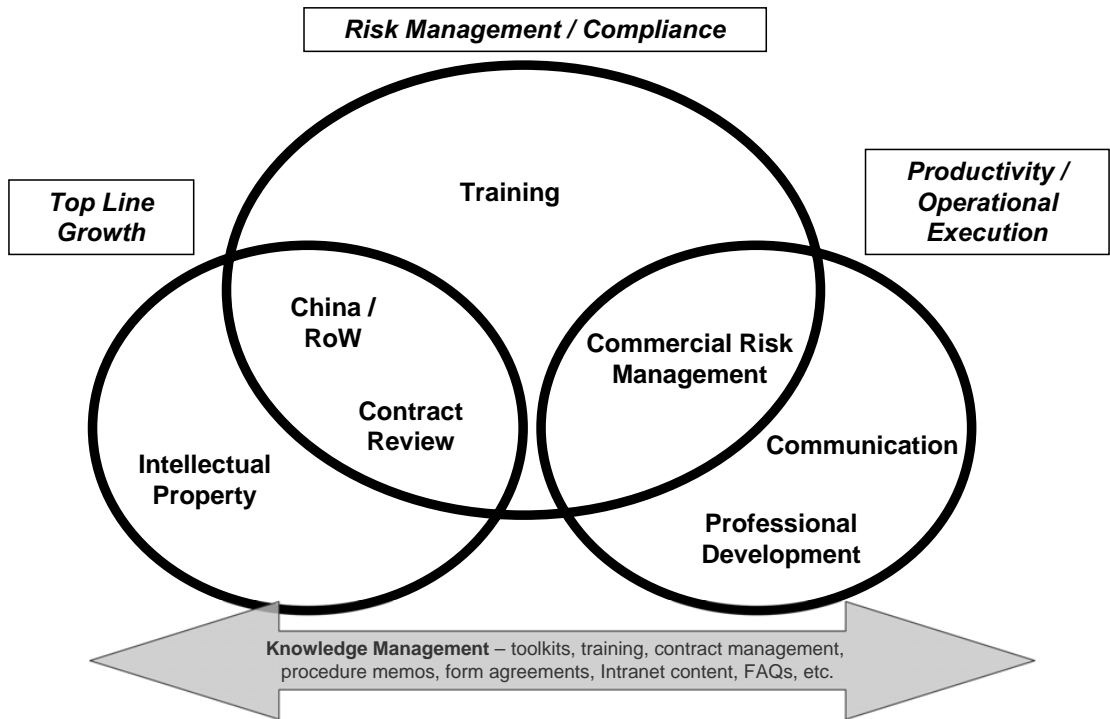
Solution: Legal functions should assess opportunity costs when determining which work to outsource and which work to perform in house.



GENERAL COUNSEL ROUNDTABLE

Source: General Counsel Roundtable research.
RATIONALIZING LEGAL DEPARTMENT WORKLOAD

Prioritization – Key Legal Initiatives



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Prioritization – Knowledge Management

Key Internal Measure of Legal Department's Success

The screenshot shows a web portal interface for 'Inside METTLER TOLEDO'. The main heading is 'Sample Agreements'. Below the heading, there is a search bar with the text 'This topic' and a search icon. The page content is organized into sections:

- Current Location:** A breadcrumb trail showing 'Home', 'Group Functions', 'Legal', and 'Sample Agreements'.
- Actions:** A list of actions including 'Create Subarea', 'Change Settings', 'Manage Content', 'Manage Portal Site', 'Alert Me', and 'Edit Page'.
- Main Content:**
 - An introductory paragraph: "The following sample agreements cover a variety of commonly arising situations".
 - A contact box for 'Bellerjeau James GF' with a small profile picture.
 - Acquisition-related agreements:** A section with a dropdown arrow. The text states: "The [Acquisition Guidance Tool](#) contains detailed instructions about how to approach the acquisition process, and includes a number of form agreements. Among other things, the AGT includes forms of confidentiality agreements, indicative offer letters and letters of intent."
 - Distributor agreement:** A section with a dropdown arrow. The text states: "This is the basic form of agreement that should be used whenever a new distributor relationship is established. It creates a buy-sell relationship between MT and the distributor. We sell to the distributor, and then the distributor sells to the end-user. The distributor contracts directly with the end user and assumes all credit and other risks associated with selling to the end user. The distributor is responsible for providing post-sales service to the end user as well."
 - Representative Agent Agreement:** A section with a dropdown arrow. The text states: "In certain circumstances, a representative agent agreement may be appropriate instead. This type of agreement authorizes the representative to market products and solicit sales but requires the representative to refer all product orders to MT. MT then contracts with the end user and pays a commission to the agent for the consummated sale. MT assumes credit and other risks associated with selling to the end user. Because representatives are not authorized to provide service to products, MT retains responsibility for providing service to the end user."
 - Purchasing Agreement:** A section with a dropdown arrow. The text states: "You can find a standard form of purchasing agreement, the EU Terms and Conditions of Purchase and other related documents on the [Global Procurement website](#)."
 - Key Account agreement:** A section with a dropdown arrow.

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Example – Risk Management

Initiative	Next Steps	Resp.	Timing
<ul style="list-style-type: none"> ▪ Design risk assessment approach 	<ul style="list-style-type: none"> ▪ Consider actual problem cases ▪ Evaluate broad menu of possible risks <ul style="list-style-type: none"> - External lists of common risks - Asia-specific 	A	Jan-Feb
		B	Jan-Feb
		A	
<ul style="list-style-type: none"> ▪ Prepare questionnaire 	<ul style="list-style-type: none"> ▪ Legal and IP matters ▪ “Take stock” <ul style="list-style-type: none"> - Significant contracts - Local counsel - Other matters (fin. controls, Intranet) ▪ Revise approach, plan visits 	C	Feb
		All	March
<ul style="list-style-type: none"> ▪ Site visits 	<ul style="list-style-type: none"> ▪ Send Qs, on-site visits <ul style="list-style-type: none"> - US - EU - Asia / RoW 	D B A	Q2-Q3
<ul style="list-style-type: none"> ▪ Evaluate results 	<ul style="list-style-type: none"> ▪ Prioritized list of risks, based on <ul style="list-style-type: none"> - Size / likelihood - Overlap with company goals ▪ Design strategies to address risks <ul style="list-style-type: none"> - Legal resource (internal / outside) 	All	Q3
			Q3-Q4

Reality Check – External & Internal

Obtain Internal Feedback & External Input

- Internal Feedback
 - Finance & group functions
 - CEO
 - Division Heads
 - Common understanding that we are working on right priorities

- External Input / Benchmarking
 - Association of Corporate Counsel
 - Local In-House Contacts
 - General Counsel Roundtable
 - 8 Customized benchmarking
 - 8 Specific initiative support

Law Department Structure & Staffing

Opportunities to Leverage Legal Time / Challenges

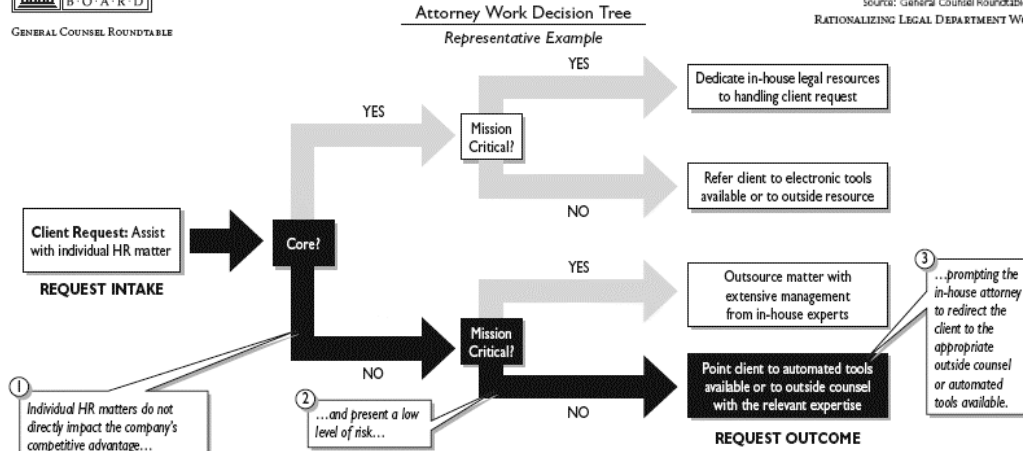
- Perform work at lowest level of value chain
 - Don't spend external resources when internal capacity available
 - Make full use of capabilities of paralegals, corporate counsel
- Ensure time is spent on strategic initiatives
 - Target 10% to 15%
- Frequent "crisis" mindset from units
 - Legal department must be flexible
 - Priorities are frequently re-adjusted
- Customer service orientation
 - Open dialogue with customers
 - When internal staff not appropriate or available, make sure alternatives are given (e.g., outside counsel)

Law Department Structure & Staffing



Attorneys Use the Framework to Triage Client Requests

Source: General Counsel Roundtable research.
RATIONALIZING LEGAL DEPARTMENT WORKLOAD



LENDING A HELPING HAND

"Rather than strictly enforce attorneys' use of the core-context framework, I employ it to *help* attorneys with prioritization decisions when new issues arise. It helps them push back when a request doesn't make sense."

Mark Chandler
Vice President Legal Services and General Counsel
Cisco Systems, Inc.

Law Department Structure & Staffing

Proximity to Business & Decision-Making is Key

- **General Counsel**
 - Involvement in key decision-making
 - In-depth knowledge of the business
 - Time to work on strategic matters
 - Ability to focus on right risks, prioritize, and understand & support business strategies
- **Regional counsel – US / EU / Asia**
 - Close to daily business
 - Peers with General Managers
 - Participation in key local staff meetings

In-House vs. Outside Counsel

Use of In-House vs. Outside Counsel

- In-house counsel
 - Use where justified by risk, costs are less than outside and
 - Volume of work is substantial / predictable
 - Examples . . .

Factor most closely correlated to lower total legal costs is the length of tenure of in-house counsel. Companies with lowest total costs pay more for in-house counsel and external counsel

- Retention of in-house counsel is key
 - Ensure right team is in place
 - Cross-training, professional development opportunities
- Need to build business knowledge
 - Stay close to business units; targeted training, incl. finance

In-House vs. Outside Counsel

Use of In-House vs. Outside Counsel

- Outside counsel
 - Use if special expertise is needed or
 - External credibility – e.g., w. board, regulators
 - Flexibility to turn spigot on/off . . . with limits
 - Possibilities
 - Acquisitions
 - Complex public company matters
 - Litigation

Position	Hourly Rate	Comment
Specialist (tax, IP)	\$800 - \$1200	Use sparingly
Senior partner	\$500 - \$800	Only efficient w. co. knowledge
Partners	\$300 - \$600	Depends on person
Associates	\$150 - \$450	Can help w. overflow, but costly
Paralegals	\$75 - \$150	Still expensive



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Practising in a Small Law Department
Therese Catanzariti, Hantro Products,
Finland**

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key areas

- People
- Communication
- Process
- Technology
- Networks

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- **People**
- **Communication**
- **Process**
- **Technology**
- **Networks**

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remember the days of the old schoolyard?

- working in a law firm
- your clients needed you
- but most importantly
- your clients *wanted* you
- *they contacted you*
- *they were even willing to pay*



welcome to the inhouse world

- two types of internal clients
- supporters
- ignorers



supporters

- they appreciate your expertise
- they involve you, seek you out
- they run fast .. and you run along with them
- partners together
- towards a common goal
- reaching further, higher, for the greater glory of the company



ignorers

- they have been happily living for years under their rock, far away from lawyers
- they *need* a lawyer
- but they don't *want* a lawyer

- that's all very interesting, but if it's all the same to you, can you just go away, go back to head office, disappear, and let me get back to business, real business

- it's not enough to sell them the legal solution
- *you need to sell them the idea of a lawyer in the first place*



engage the ignorers

- *its tempting to be reactive*
- only respond to requests, calls, emails
- you have a lot of work to do already

- your job is to protect the company
- *the whole company* – not just the people who call you

- *there may be all sorts of problems lurking under the rock*
- you need to engage



engage – become accessible

- sit in the middle of the business unit
 - even for a few days a week /month

 - door always open / open plan office

 - join them for lunch
 - have a cup of coffee in the cafeteria

 - small group training
- training ...is not about training
training is your calling card, your introduction



engage - credibility

- you are part of the solution
- you are part of the team – not outside the team

- **senior management** support

- **peer** endorsements / recommendations
- build up a group of supporters who will recommend you to their peers
- don't just rely on senior management support
- "mummy says you have to play with me"



- **People**
- **Communications**
- **Processes**
- **Technology**
- **Networks**

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lawyer as corporate memory

- Where's the..
- What clause is the..
- Which agreement is the ..
- Which law makes us ..
- Which law stops us ...

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lawyer as corporate memory

- don't become the corporate memory!
- you may be busy on a big deal for weeks
- you may not be available at 3am
- you may get sick
- you may want to take a holiday
- (*gasp!*) you may want to leave the company one day



communications

- write it all down and put it on the intranet

- FAQ
- summary of key terms for key agreements
- negotiation status – draft sent, negotiating, signed
- pro-forma agreements
- explanations of pro-forma agreements
- training materials



communications - email

- the first time you are copied on an email, summarise your understanding of issue
- useful summary for everyone else who is copied on the email (and will be in future)
- useful summary in months to come when everyone has forgotten the details
- reveals at an early stage if there are any misunderstandings



communications – reviewing agreements

- if you can negotiate
 - insert date on draft and redline all changes
 - explain change in footnote / comment
- if you cannot negotiate
 - explain risks to business owners
 - help business owner create methods / systems to manage risks
- create PPT summary –rights/obligations/restrictions/risks
 - email business owner
 - post to intranet
 - use in training
- record key terms of agreement (eg excel)



communications – corporate voice

- you are not on a very, very, very long secondment
- you are not a mini-law firm with offices in a company
- you are a department of the company
- just like the IT dept, the marketing dept
- you have to speak their language



- **People**
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- a law firm is like a feature film
- one director, one screenwriter, one shoot
- one-off tailored agreements

- internal practice is like a tv series
- lots of directors and writers, weekly shoot
- template agreements / fill in the details



build the infrastructure

- check pro-forma agreements
- streamline the process
- build into business processes
 - CRM
 - Project plans
- create policies covering key legal risk areas
 - Copyright
 - Product liability
- training schedule
- audit / monitoring

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intranet is your friend

- tempting to have a legal page
- organised, structured, good graphics, great content
- *but no-one will ever look at it*

- include your material in business team pages
- sales pages – pro-formas, negotiation status
- R&D pages – copyright policy, patent policy
- sourcing – key terms of key supply agreements



use outlook – REALLY use outlook

- say goodbye to a big email inbox
 1. answer it
 - 2 create rule automatically file regular non-urgent in "read later" folder (office manager emails, weekly marketing report)
 - 3 create folder, file it and put in Task List
- dedicate first hour every morning
- answering, allocating and prioritising Task List



learn to love excel and powerpoint

- *learn the language of business*
 - learn how to program in excel
 - learn how to communicate in PPT.
-
- status of negotiations
 - agreement key terms



internet – a big free library

- **general legislation / case law**

- UK <http://www.bailii.org/>

- US <http://www.law.cornell.edu/>

- **company names / address / company number**

- UK Companies House register

<http://wck2.companieshouse.gov.uk/b498d405a28c277914cbad6323d397b4//wcframe?name=accessCompanyInfo>

- US – check website of Secretary of State of state the company is incorporated in



Internet – a big free library

● **websites of leading international law firms**
if anything big happens
they will soon have free online newsletter /publication all about it

- <http://www.freshfields.com>
- <http://www.cliffordchance.com/>
- <http://www.linklaters.com>
- <http://www.allenoverly.com/>

- <http://www.mofo.com/>
- <http://www.sullivanandcromwell.com>
- <http://www.shearman.com>
- <http://www.whitecase.com>



internet – a big free library

- **IPR – Copyright**

- US Copyright Office
<http://www.copyright.gov/>
- England
<http://www.patent.gov.uk/copy/index.htm>
- Europe (directives)
http://www.europa.eu.int/comm/internal_market/copyright/index_en.htm

- **IPR - Trade Marks**

- US – US Trade Marks Office (including search)
<http://www.uspto.gov/main/trademarks.htm>
- UK – UK Trade Marks office (including search)
<http://www.patent.gov.uk/tm/>
- Europe (directives)
http://www.europa.eu.int/comm/internal_market/en/indprop/tm/index.htm



internet – a big free library

- **IPR – Patents**

- US Patents Office
<http://www.uspto.gov/main/patents.htm>

- Patent Search
<http://www.uspto.gov/patft/index.html>

- UK Patents Office
<http://www.patent.gov.uk/patent/index.htm>

- Patent Search (including English patents, European patents and PCT databases)
http://gb.espacenet.com/search97cgi/s97_cgi.exe?Action=FormGen&Template=gb/EN/home.htm

- **Domain Names**

- Domain name owner <http://www.geektools.com/whois.php>



- **People**
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network

- you won't know the answer to everything

- participate in local branches / seminars
 - licensing association
 - IPR societies

- get on a law firm mailing list (or maybe 3 or 4)

- ACC databases

- ACC subscription lists

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strive to be happy

- you aren't the main game
- many of your non-legal colleagues can't tell the difference between a good lawyer and a bad lawyer – you're "a lawyer"

- set your own standards
- benchmark your own work

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GENERAL LINKS

General legislation / case law

UK <http://www.bailii.org/>
US <http://www.law.cornell.edu/>
Australia <http://www.austlii.edu.au>

Company names / address / company number

UK

Companies House
<http://www.companieshouse.gov.uk/>
Companies House register
<http://wck2.companieshouse.gov.uk/b498d405a28c277914cbad6323d397b4//wcframe?name=accessCompanyInfo>

US

US Securities and Exchange Commission
<http://www.sec.gov/>

Delaware Secretary of State, Division of Corporations, Name Search
<https://sos-res.state.de.us/tin/GINameSearch.jsp>

NY State Department of State, Division of Corporations, Business Search
http://appsext5.dos.state.ny.us/corp_public/corpsearch.entity_search_entry

California Secretary of State, Business Portal
<http://kepler.ss.ca.gov/list.html>

Websites of leading international law firms

UK

<http://www.freshfields.com>
<http://www.cliffordchance.com/>
<http://www.linklaters.com>
<http://www.allenoverly.com/>

US

<http://www.mofo.com/>
<http://www.sullivanandcromwell.com>
<http://www.shearman.com>
<http://www.whitecase.com>

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Meeting The Challenges of Practising In A Small Law Department
Therese Catanzariti, General Counsel, Hantro Products Oy, Finland

IPR LINKS

Copyright

US Copyright Office
<http://www.copyright.gov/>

England
<http://www.patent.gov.uk/copy/index.htm>

Europe (directives)
http://www.europa.eu.int/comm/internal_market/copyright/index_en.htm

Trade Marks

US Trade Marks Office (including search)
<http://www.uspto.gov/main/trademarks.htm>

UK Trade Marks office (including search)
<http://www.patent.gov.uk/tm/>

Europe (directives)
http://www.europa.eu.int/comm/internal_market/en/indprop/tm/index.htm

Patents

US Patents Office
<http://www.uspto.gov/main/patents.htm>

US Patent Search
<http://www.uspto.gov/patft/index.html>

UK Patents Office
<http://www.patent.gov.uk/patent/index.htm>

UK Patent Search (including English patents, European patents and PCT databases)
http://gb.espacenet.com/search97cgi/s97_cgi.exe?Action=FormGen&Template=gb/EN/home.hts

Domain Names

Domain name owner <http://www.geektools.com/whois.php>

PERFORMANCE CHALLENGES FOR GENERAL COUNSEL

Sally J. March

USEFUL SOURCES

Association of Corporate Counsel www.acca.com

Ellen R. Dunkin, James A. Woehlke "Role of the General Counsel"
ACCA InfoPak May 2005

Starting a Law Department from Scratch, ACCA Toolkit, March 2005

R. Peter Fontaine, "Mending the Split Personality"
ACCA Docket September/October 1995

Allison B. Brotman & John H. Ogden, "Managing the Split Personality"
ACCA Docket May/June 1995

Thomas Sager, Gerald Boccuti, "Achieving the Common Goal – DuPont's
Performance Metrics"
ACCA Docket September/October 1997

Securities Exchange Commission www.sec.gov

Summary of Rule-Making re: Standards of Professional Conduct for Attorneys

www.sec.gov/news/press/2003-13.htm

www.sec.gov/rules/final/33-8185.htm

Text of Sections 307 and 404 of Sarbanes-Oxley Act 2002

www.sec.gov/about/laws/soa2002.pdf

Text of SEC Rule on Professional Conduct of Attorneys

17 CFR Part 205

www.gpoaccess.gov/cfr

Others, e.g.,

Jay Musoff, Adam Zimmerman, "The Changing Role of the General
Counsel" NYLJ August 6, 2004 www.orrick.com

sallymarch@compuserve.com



203 Meeting the Challenges of Practising in a Small Law Department

Sally J. March

ACC Europe 2006 Annual Conference: Taking the Lead As In-House Counsel

May 14-16, Athenaeum Intercontinental
Hotel, Athens, Greece



Performance Challenges for General Counsel

 **What is the relationship between the General Counsel and the Board in the world of Sarbanes Oxley?**

2. Demonstrating value



Performance Challenges for General Counsel

What is the relationship between the General Counsel and the Board in the world of Sarbanes Oxley?

What is the relationship between the General Counsel and the CFO?

Has either changed? If so, how?



Performance Challenges for General Counsel

Role of in-house counsel

- **Compliance**
- **Legal advisor**
- **Ethics cop**
- **Corporate officer**
- **Business advisor**
- **Counselor**



Performance Challenges for General Counsel

What's changed with Sarbanes Oxley?



Performance Challenges for General Counsel

• Sarbanes-Oxley Act

SEC. 307. RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

- (1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and
- (2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.



Performance Challenges for General Counsel

**Sarbanes-Oxley hasn't really changed our role-
But may have changed our clients' perception.**

**If SOX prompts our client to focus on our role as
ethical cop, it may mean that we have to work
harder at the relationship of trust.**



Performance Challenges for General Counsel

Demonstrating Value

- **Who is the audience?**
- **How do our corporate colleagues perceive the legal function?**
- **How do we measure intangible benefits?**
- **Learning the language of management**



Performance Challenges for General Counsel

Understanding different perceptions of value

● What is valuable to the company?

- **Assets**
- **Profits**
- **Shareholders return**

What does management measure?

- **Internal Rate of Return (IRR)**
- **Net Present Value (NPV)**
- **Return on Investment (ROI)**



Performance Challenges for General Counsel

How is legal perceived?

- **As a cost center, not a profit center**
- **Outside counsel very expensive**
- **Slow transaction times hinder opportunities**
- **Unresponsive, poor communicators**
- **Connection between risk management and revenue enhancement isn't clear**



Performance Challenges for General Counsel

Management vs. Legal Department Thinking

Budgets

- Corporate – set and manage
- Legal – explain external spend

Headcount

- Corporate – heads are FTE or not
- Legal – unique skills, institutional knowledge

Information Management

- Corporate – use technology to make info a commodity
- Legal – each case is different

Measuring performance

- Corporate – use metrics to measure success
- Legal – success = company still in business



Performance Challenges for General Counsel

Measuring Value in Legal

Establish a baseline. What is important to your company?

- **Inputs**
 - Number of lawyers and cost of service
 - Internal billings
 - Outside counsel costs
- **Measurements**
 - Matters per lawyer
 - Value of deals
 - Results of litigation, settlements
- **Client satisfaction**



Performance Challenges for General Counsel

Defining success

- Increase in responsiveness, quality of service
- Decrease in cost of services delivered
- Increase in asset value or shareholder value
- Effectiveness of preventative measures
 - Reduction in litigation, cost of claims
 - Less severe problems

If Legal can't provide the numbers, management will.



Performance Challenges for General Counsel

Intangible Benefits

- Intangible benefits are difficult to predict and measure. They include:
 - Risk management
 - Strategic – working towards overall corporate objectives
 - Intellectual Property – capturing know-how and intellectual capital
 - Competitive – bringing products/services to market faster, cheaper and better
 - Culture – reinforcing a corporate culture, preserving institutional memory



Performance Challenges for General Counsel

Tips

- **Understand the business metrics that can be applied to the legal function.**
- **Involve Finance.**
- **If discrete initiatives or functions are easier to analyze, focus on those.**
- **Intangible benefits count but recognize that Finance will discount them. Separate tangible and intangible benefits in your analysis.**
- **Benchmark.**
- **Market!**