



405 ACCA Boot Camp: An Introduction to In-house Practice

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President & General Counsel
GST Telecommunications

Paula E. Boggs
Executive Vice President, General Counsel, & Secretary
Starbucks Coffee Company

Max F. Miller
Corporate Counsel
H.J. Heinz Company

Philip R. Strauss
Associate General Counsel
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Faculty Biographies

Bruce D. Becker

Bruce D. Becker is president, CEO, and general counsel of GST Telecommunications in Vancouver, WA. Mr. Becker is managing GST through proceedings under chapter 11 of the United States Bankruptcy Code.

Mr. Becker was GST's senior vice president of law and regulatory affairs before he became the company's chief executive officer. Before joining GST, Mr. Becker worked at Ameritech Corporation in Chicago for 11 years, ending his time there as general counsel of Ameritech Long Distance Industry Services.

Mr. Becker has been an active member of ACCA for a number of years. He is a member of ACCA's Board of Directors and is a former president of ACCA's Chicago Chapter. Mr. Becker also served as president and board member of the Chicago Bar Foundation, the philanthropic arm of the Chicago Bar Association.

Mr. Becker received his undergraduate degree from Yale University and his law degree from Harvard Law School.

Paula E. Boggs

Paula E. Boggs was recently named executive vice president, general counsel and secretary at Starbucks Coffee Company in Seattle, WA. In this position, she leads a 54 person law & corporate affairs department, and is also responsible for overseeing all facets of the company's legal matters. She reports to president and CEO Orin Smith and is a member of Starbucks' operating council.

Prior to joining Starbucks, Ms. Boggs served as vice president, law for Dell Computer Corporation in Round Rock, TX where she provided legal counsel in connection with the board of directors audit committee and Dell compliance efforts. In addition, worldwide operations, all product groups, and information technology legal functions reported to Ms. Boggs.

Before joining Dell in 1997, Ms. Boggs was a partner at the Seattle law firm Preston Gates & Ellis. Her background includes 10 years' experience with the U.S. government in such roles as U.S. Army captain, staff attorney on the White House Iran-Contra Legal Task Force, assistant U.S. attorney for the western district of Washington (Seattle) and, most recently, staff director of the Tailhook-driven Advisory Board on the Investigative Capability of the Department of Defense, a position for which she received the Secretary of Defense Award for Excellence. Among her other awards, Ms. Boggs received the Presidential Service Badge from President Ronald Reagan and is a two time recipient of the U.S. Department of Justice Special Achievement Award.

Ms. Boggs serves as a member of the ABA's House of Delegates, is an American Law Institute member, and is on ACCA's Board of Directors. She also serves on The Johns Hopkins University Board of Trustees (Vice-Chair, Audit and Insurance Committee) and on the advisory board of the U.C. Berkeley Center for Law & Technology. Ms. Boggs past activities include, serving as chair of the ABA Standing Committee on Constitution & Bylaws, co-chair of the Business Torts Committee

of the ABA Litigation Section, and adjunct professor at the University of Washington School of Law. She has served on the criminal justice act panel of the U.S. District Court, Western District of Washington (Seattle) and as vice chair of the Washington State Equal Justice Coalition (Legal Services).

Ms. Boggs has a bachelor's degree from The Johns Hopkins University and a law degree from the University of California at Berkeley (Boalt Hall), where she was named the 1998 Recent Alumna of the Year in recognition of her professional and civic contributions.

Max F. Miller

Max F. Miller is corporate counsel for H.J. Heinz Company in Pittsburgh. His current responsibilities include serving as primary counsel for the Heinz Pet Products and Heinz Specialty Pet business units. In this capacity, Mr. Miller develops and negotiates acquisitions and divestiture agreements, manages litigation matters, and develops and negotiates various day-to-day commercial agreements related to the day-to-day commercial operations of the business. In addition, Mr. Miller advises various other business units on the development of agreements and/or policy related to international distribution agreements as well as certain other international transactions.

Prior to joining Heinz, Mr. Miller served as staff attorney for Federated Investors. In that capacity, Mr. Miller served as primary counsel of the corporate practice group, providing legal counsel to the transfer agency, trust accounting, and fund accounting business units. In addition, he served as assistant secretary to certain mutual fund prospectuses.

Mr. Miller currently serves as president of ACCA's Western Pennsylvania chapter, is on the board of trustees of the Holy Family Institute (serving families in crisis), the board of managers of the Kingsley Association (providing community services), the board of directors of the University of Pittsburgh Law School Alumni Association, and is a basketball coach for New Kensington Youth Programs.

Mr. Miller received a BA from the University of Pennsylvania, is a graduate of the University of Pittsburgh School of Law, and is currently pursuing his MBA from the Kellogg School of Management at Northwestern University.

Philip R. Strauss

Philip R. Strauss is assistant general counsel and assistant secretary at Brio Software, Inc., in Santa Clara, CA. His responsibilities include software licensing for the eastern United States and international regions, employment matters, corporate matters for Brio's international subsidiaries, US securities law, financing transactions, and litigation.

Prior to joining Brio, Mr. Strauss was an associate in the structured finance department at Shearman & Sterling in New York and, before that, in the general litigation department at Jones, Day, Reavis & Pogue in Chicago. Mr. Strauss began his legal career as a clerk for the Alaska Supreme Court.

Mr. Strauss received his BA from Emory University and his JD from Duke University

Reebok Rules

by John B. ("Jack") Douglas, III
Vice President and General Counsel of Reebok International, Ltd.

ACCA Docket
Spring 1992

As General Counsel for Reebok, I have learned some important lessons about lawyering in an entrepreneurial environment. My CEO is a businessman who has developed a healthy mistrust of lawyers and their role in furthering the business function. Indeed, not long after I joined Reebok, as we were sitting in a meeting, Paul Fireman, my CEO, launched into one of his lawyer diatribes; his parting line was, "I hate lawyers-- not you, Jack; you don't count." Not sure quite how to accept that remark, I took it as a compliment. But somewhere tied up in that comment there's a lesson.

Reebok started in England in 1895 as the first company to manufacture and sell spiked running shoes. The shoes were sold under the J.W. Foster brand name. The company remained a small running shoe company until the 1950's, when the grandson of the original founder decided that he wanted to try his hand at his own athletic shoe company. He split off from the family and started a new company which eventually became known as Reebok. This new company eventually absorbed its predecessor company and continued as a small running shoe company with sales of no more than \$1 million worldwide when Reebok's current CEO, Paul Fireman, took a license to distribute Reebok shoes in North America.

The company started to take-off in 1982 with the introduction of athletic support shoes specifically designed for women for the new sport of aerobics. The shoes were performance shoes, but they were comfortable beyond anyone's expectations. They were made of a garment leather which had never before been used for shoes before and they were colorful. They were designed to appeal not only to the performance needs of this developing sport but also to make a fashion statement. Sales in 1982 were \$3 million.

In succeeding years, sales grew to \$13 million, \$66 million, and \$307 million in 1985 when the company had its initial public offering. By then, the U.S. company had acquired its U.K. licensor. I joined Reebok in early 1986 when Wall Street was anticipating that the company would achieve sales of about \$450 million. The company ended up with revenues of \$919 million that year. It was a rocket show. Sales in 1991 were \$2.734 billion; 1992 sales are expected to exceed \$3 billion.

Obviously, the company is successful. In fact, when I came to Reebok, the company was already successful beyond most people's wildest imaginings. The fear at that time was that perhaps Reebok was a fad. The rocketship had gone up and now the rocketship would go down. One of the key challenges facing me was how to start a legal department within a very successful company in a way that would add value to the organization, rather than detract from its business success. The last thing Reebok needed was for me to try to install a complex set of legal mechanisms designed to fix what wasn't broken.

That is not to say that Reebok did not face a number of major legal concerns, especially as the company took on the challenge of international growth and global copying and counterfeiting. As an attorney, I could see that my new job would offer many challenges, but I could also see that the job had incredible potential for fun.

I attribute whatever satisfaction and success I have had to strict adherence to a set of rules that dictate our mission and method for doing business at Reebok. I had largely developed these rules by the time I got to Reebok, but my colleagues and I in the law department have enhanced and refined them during our tenure at the company.

The rules serve two functions: they keep the lawyers focused on the client's objectives and they remind us of the priorities which will keep us successful and challenged in our jobs. It is my feeling that every legal manager in today's business environment should develop his or her own set of rules, publish them, and make sure that the legal staff follows them. I hope that our rules at Reebok can act as a springboard for those who are interested in creating and maintaining a healthy business-to-legal (as well as a good intra-legal) team.

REEBOK RULES

1. Lawyers Should Attend All Key Business and Staff Meetings

When I was hired to be Reebok's General Counsel, I did not care (within limits) how much I got paid or what my title was. What I cared about was being in the middle of key business decisions at the company. I agreed to join the company on the basis that I would attend all meetings of the Board of Directors and any Executive Committee and Strategic Planning Committee meetings. This involvement has proven to be a critical asset to my performance and job satisfaction; because of it, I am an important player in key decisions at Reebok. I make sure that all Reebok lawyers are invited to staff meetings for those business units for which they serve as counsel. And I make sure that I or my staff members attend.

When faced with a Division President who is reluctant to open his or her business meetings to the lawyers, I point to past successes in other divisions, and ask that this Division President try it on a trial basis. Then I talk with my lawyer to make sure that he or she realizes what works and what does not work at staff meetings. For example, if the lawyer hears something at the staff meeting that is absolutely outrageous, illegal or unethical Ñ especially in the first few meetings while the lawyer is still gaining credibility as an attendee Ñ the lawyer should not jump up and down and demand the conversation cease. A more delicate strategy is to take the Division President aside after the meeting and give some quiet advice. The goal is not to prove that the lawyers know more than the clients. The goal is to ensure legal and ethical behavior by encouraging managers to invite the lawyer back to the next meeting.

2. Eliminate the "No" Word From Your Vocabulary

When a client walks into your office and begins talking about how he or she would like to engage in an horizontal anti-trust conspiracy with your biggest competitor because that would allow both of you to make more money, there are at least two ways in which you can respond. First you can say: "Oh my God! NOOO! You can't do that. If you do something like that you'll

go to jail- that's a ridiculous idea!" This approach has the advantage of laying your position out on the table quickly and succinctly, but has little else to speak for it.

The second alternative is a bit more subtle: "Gosh, I think you've got a great idea to make more money for the company. I really like your idea, but there are one or two things that perhaps we should discuss concerning your method of implementation and some legal implications." By all means, proceed with the legal analysis, and straighten the deal out. Just start with a "yes," not a "no." Remember: your client suggested the idea because he or she liked it, and wants your help; don't cast yourself as a hindrance.

3. Corporate Counsel are Business People Ñ- Hone and Use Your Business Judgment

Too often I hear corporate counsel suggest that lawyers should carefully limit their input to legal analysis only. This was the philosophy employed by the General Counsel of a large legal department where I previously worked. I think this is a big mistake. Some of the most valuable contributions that I have made at Reebok (and that members of my department have made) have been a result of our collective business judgment and input. As lawyers, we get an opportunity to approach a problem without line responsibility for it. As a result, we are sometimes able to contribute insights that are very meaningful in resolving a business issue. Operate with a broad field of vision. Don't limit yourself. (However, the corollary of this rule is to make sure you still give good legal advice Ñ if you don't do so, no one will.)

4. Return Phone Calls Promptly

One of the most important aspects of the in-house counsel/client relationship is making sure that you return phone calls promptly, and respond to memos, hallway requests and other requests for legal advice on a timely basis. Nothing is worse than a client who cannot get in touch with his or her lawyer. I know, because I am frequently the client trying to call an outside lawyer. In my opinion, customer service and good communications are crucial for the inside practitioner. As an in-house lawyer, you have only one set of client relationships; if those relationships are not carefully built and preserved, at the very least the working environment will be less pleasant. At worst, you could lose your job.

5. Learn About Problems Early

Nothing beats learning about legal problems early. This is one of the key benefits of attending important staff meetings. It is also a reason why lawyers should find other means of staying abreast of business developments, whether it is by informal contact with members of your business and working groups, talking to secretaries of key business people, or otherwise. It is much easier to convince a client to revise a proposal in its incipient phase than it is to curb it once it has begun to gather momentum or supporters who develop a personal investment in its success.

6. Get to Know Your Clients as People

I attend the major business trade shows in our industry and many of our sales meetings. I encourage my staff lawyers to do likewise. This not only enables you to know your clients by spending time with them in a business setting, it also allows a little bit of after-hours mingling and enables you to become "one of the gang." It is a mistake to think that you will be treated as a member of the team if you don't act like one.

7. Learn the Business

Whatever the business is, make sure that you learn it thoroughly. Get on the list of trade journals for your industry. Attend sales meetings and trade shows. Bone up on the company's literature or files. One of the values that an in-house counsel can bring to a company is a thorough understanding of both the business and legal principles applicable to the business.

8. Try Spending a Portion of Your Day Wandering the Halls

Have meetings in your clients' offices. Arrange some time to simply run into people. I find that some of my most productive time at Reebok has come from hallway meetings that have been completely unplanned on my part or on the part of my clients.

9. Avoid Memos: Communicate Orally

Memos are a cool method of communication. They don't allow the give and take that can occur in an oral exchange. Avoid memos unless written memorialization is absolutely essential to avoid miscommunication or because of scheduling conflicts. For those who are not on-site at your office, I suggest that you work your telephones instead of writing memos. When clients are out of the office, call them with your information, even if it means calling them out of town or at home (using good judgment on this, of course), or in other difficult-to-reach situations. In this way, you will establish yourself as their lawyer, and not just another office bureaucrat.

10. Integrity is Crucial

Make sure that you respect confidences and that you are honest and fair both with your clients and your opponents. I'm not suggesting that you shouldn't be an aggressive advocate in dealing appropriately with your opponent. Just do so honestly and fairly. The dividends will be enormous over time in future situations.

11. Make the Coffee

One of the things that impressed me when I joined Reebok was finding Paul Fireman making the morning brew in the coffee room during my first week on the job. It certainly delivered a message to me - and, I'm sure, to other employees - that no job is too unimportant. I'll never forget one Board Meeting when we had lunch served on expensively decorated china plates. Lunch was over, and Paul wanted to get on with the meeting. Rather than place a phone call and wait for someone to come and clear the plates, Paul simply got up and carried his and one other director's plate to a small kitchen nearby. He returned to the room, picked up two more plates, and walked out the door again. All of a sudden, the directors realized that the CEO was clearing the table. You have never seen a table cleared faster in your life. Again, quite an impression.

12. Be a Problem Solver

When a client walks into your office, it usually means that some problem needs to be solved. Sometimes the client brings in perfectly formed legal questions which require your legal advice. Other times, the client's problem might be more in the nature of a business question which the client assumes is a legal problem, or a mixed, unformed mish-mash. Regardless of which category the question falls into, help the client solve the problem, even if it requires your help or action outside of the traditional "limits" of legal advice. You want to encourage clients to come

in; you don't want to encourage them to decide without your help whether the problem really requires legal input.

13. *Stay Focused on What is Really Important*

I remember being in a meeting at a large, prestigious Boston law firm at which we were discussing a possible takeover. We were discussing our strategic plan for the transaction and other details when someone suggested that, "of course we would need to get a fairness opinion." Paul asked about the nature of a fairness opinion and what it would cost. One of the senior partners at the firm said, "Well, fairness opinions generally run less than one percent of the deal, so it wouldn't be that much... probably about \$400,000." Paul leaned forward: "Oooohhhhhh, Wait a minute - do you realize what you just said? Does your mother know you talk like this? You just spent \$400,000 as if it was nothing." This senior partner turned as bright a shade of red as I've ever seen. The lesson: stay focused on what's important. Four hundred thousand dollars is a lot of money at any time.

14. *Be a General Practitioner*

My job at Reebok is as a general practitioner responsible for the overall legal (and business) health of the client. I liken the role to the medical doctor who acts as the general practitioner responsible for his or her patient's health. If I can perform some specialty functions Ñ fine, but my most important job is to make sure that Reebok gets the legal services it needs, when it needs them, and at the most reasonable cost.

15. *Do "The Legal Thing"*

My direction from Paul when I got to Reebok was to do The Legal Thing - whatever that might be. What a powerful job description! The freedom that directive gives me in addressing the problems of the company is enormous. It has allowed me to create a fabulous job in an exciting legal department in a terrific company. I've never forgotten that. When people come to work for me, I suggest that they do the same thing: "Do the legal work for 'X' division." I then allow them to dream and create their own jobs. Naturally, I stay involved, but I think it's important for people to create and fulfill their own goals. And I view my job in that context - to help my staff lawyers and paralegals achieve their career goals by helping to eliminate external or internal obstacles that are inhibiting them from achieving what they want to achieve.

16. *Be Available*

I have an open door in my office at all times. My phone numbers at home, work or travel are always available to my clients and staff. I'm available 24 hours a day, every day. I don't work 24 hours a day, but I'm always available.

17. *Legal Work & the Bell Curve: Not Every Job Requires an "A" Effort*

One of the most important judgments that I ask my lawyers to make is what work needs an "A" effort and what work needs a "C" effort. Some projects that come into the department deserve a quick glance and approval, others should be reviewed carefully. Some projects shouldn't be done at all. If you micro-analyze every project and treat the resulting opinion as a law review article, you are not allocating your time to its best use. If you fail to prioritize your workload, you will not be able to respond appropriately to the important projects, and you may find yourself missing the forest for the trees.

18. *Avoid Titles*

Especially in a small law department, titles are unnecessary and probably promote more ill-will than good. At Reebok, we have no titles and never have had any. By not having titles we avoid competition and complaints, and we promote teamwork and solidarity.

19. *Be Proactive: Educate Your Client Groups*

Hold seminars regularly to train people outside the law department about routine responsibilities that have a legal implication. At Reebok, we hold regular educational programs in areas of antitrust law, employment law, advertising law, and intellectual property law. Your company might require different programs, but they surely require some education, perhaps in antitrust issues, officer and director liabilities, environmental concerns, etc.

20. *Move Routine Work Outside the Department*

At Reebok, we've been able to develop standard contracts and make the drafting of such contracts fairly routine. We first move this work to a paralegal. We then move the paralegal to the business department where that person functions as a manager of contracts. This is good for the individual and for the legal function and the business department. We "normalized" these functions for our marketing department and did the same thing in our treasury department by "installing" a stock option plan administrator. By routinizing functions and moving people into the business departments that house their workload, we keep the legal function more focused on areas truly requiring our expertise. Our goal is to get the job done in the best possible manner, not to create the largest department.

21. *Be Enthusiastic*

Nothing gets you "invited in" and "invited back" quite as well as plain old enthusiasm. Join in, be part of the program, commit yourself and your department, be a team player.

22. *Give answers: Get to the Point*

Give answers. If Paul Fireman had prepared this article, he might have started with this "rule." Nothing upsets Paul more than a detailed analysis of a problem with no answers - for any reason - even, or especially if, it is because it is outside your "area." If you don't know, find out who does. Always make a recommendation or provide requested information and be clear about it. Your client may disagree and that's ok, but make sure you answer the question.

23. *Hire People Better Than You Are*

Always hire people whose intelligence and capabilities scare you because they might be better than you are. Then allow them to succeed. This is the sign of a good manager and you will flourish as a result. Resist the temptation to hire people who will make you shine in a one-on-one comparison. A team made up of inferior people will drag you down. The high level of competence of my lawyers always makes me a little nervous, but my client benefits. In return, that's a better reflection on me than I could ever engender on my own.

Conclusion

These "Reebok Rules" may not apply universally to every department and management style. You may disagree with some of the rules I swear by. The lesson is not that I'm right or wrong, but that these rules work for me because my client and I are in tune and communicating. What is included in your set of rules is not paramount; what truly is important is that the rules you adopt reflect the values of your company and the priorities of your working relationship with your client.

The In-house Counselor--Perspectives from the Executive Suite

by Bruce D. Becker, Senior Attorney, Ameritech Services

ACCA Docket

Winter 1993

On the need to know the business:

"It is very important, if not imperative, for the lawyer to know the business. That's one of the reasons that corporate lawyers are preferred. There is a great gap when you are dealing with lawyers who don't really understand the business, the managers, the dynamics, the challenges, the goals. One of the things that is the most frustrating about some (but I hasten to add, not all) outside counsel is the fact that they bring in waves of people, many of them needing education about the business. That's a significant advantage of in-house counsel." _Mr. Richman

"How do you establish a relationship with the people within the organization? First of all, you have to know the business. There is nothing worse than getting a memorandum or communication orally from a lawyer saying, 'Here is what the law is, but I don't have a clue what implications that has for your business.'" _Mr. Allen

On the need for responsiveness:

"You . . . have to recognize it is a service business. You have to respond promptly to questions even though you may not be able to get an answer until late in the day."

"The client is looking for promptness and responsiveness from in-house counsel. If you can't get right back with the answer, say so--but say why and when you can get back." _Mr. Richman

On the importance of prioritizing:

"One way to be responsive and professional is to never give a written or oral answer that someone can't read or hear in about two minutes. The president of our company has told me time and again he can't read anything longer than two pages. So I took that clue and everything I give him is one page long. All of my work, all of my research, everything I give is one page long. Now if that manager, executive, president or whomever has questions, disagrees with the analysis or disagrees with the conclusions, he or she is going to follow up, challenge me. And that's when I pull out the folder and say, 'This is all my research.'

"No one in an executive or senior management position has time to do anything other than see a conclusion--we can do this, 'Yes' or 'No,' and here are the alternatives. Lay it out like a short business plan." _Mr. Hynes

"[Y]ou have to employ what I call the 90/10 rule. My experience over the years is that 90% of the time and 90% of the cost of any legal process is devoted to get to the last 10% of any theoretical perfection. Some things warrant spending the time and the money for that last 10%. I

dare say most--at least in our business--do not. Counsel must recognize which do and which don't. Communicate to your client that you are going for 90% on this, and here are the risks of not going for 100%. Letting your management share in the judgment that this is "90%er" will cause you to be far more effective in supporting the business mission of the company. If the lawyer consistently insists on a 100% result in all cases, he will not be effective, he will not be accepted by management and he certainly will not be cost-effective in trying to do his job."

_Mr. Allen

"There is a . . . syndrome [that] I think of as the 'absolute zero risk' syndrome. This is where a lawyer . . . becomes bogged down in making absolutely certain that under no circumstances can the company get into any kind of trouble. This is an approach that is well-intentioned, but . . . [i]t is not conducive to problem solving.

"When you are a decision-maker in a corporation, whether it's as a CEO or in another capacity, you need input from a variety of sources and a variety of functions to make your decisions. One of the inputs to problem-solving which you need, and may need badly depending on the nature of the problem, is that of a lawyer. The heads of the various functions need to sit around a table and put their advice together for the benefit of the person who has to make the decision. As part of this process, in-house counsel needs to form judgments on the degree of the risks, not just the presence of risks, and communicate those views to the client." _Mr. Richman

On marketing the in-house legal function:

"[I]t seems to me you have to identify what are your services and then go sell them. The in-house lawyer who states that he doesn't have to worry about his clients is dead wrong. After one of my lawyers first started with our company he came in and said one department simply does not want to use his services. They view him as an obstruction, slowing them down, stopping them from doing business. There was no way that I could go out by fiat and just order them to use certain services--the attitude would get worse instead of better. My advice was for the attorney to figure out why what he was trying to do helped the department come to a quicker and better result, and how that advice would help Amli become a better company. Then go down the hall and sit down with them and tell them, 'Look we've got to talk--things are not working.' Set straight the relationship. As it turns out, it was a very effective method." _Mr. Allen

"I remember a discussion with a lawyer from another company about client relationships and in-house corporate practice. He said one of the reasons he made the move from a law firm to a corporate law department was "I don't have to worry about . . . getting clients and maintaining clients and keeping relationships and all that sort of thing. I got out of the rat race." I said to him that client relationships are as important in a corporate legal department as they are in a law firm. They take a different form, and true, you don't have to go out beating the bushes, but anyone who doesn't think that client relationships are important in a corporate law department has another thing coming." _Mr. Richman

On the importance of client interaction:

"[I]n-house counsel has to . . . interact. It seems to me the worst habit that lawyers develop is, 'I sit in my office--if somebody comes down here and presents a problem, I will listen and tell them I'll get back to them. Then I'll write a memorandum and send it off to them.' You've got to walk around, you've got to go in people's offices, have lunch with them. It's both understanding the business and also building a relationship with the people you are trying to serve. Without that, I don't think you can be an effective in-house or outside counsel.

"Another rule is to communicate. Everybody in society has to learn to communicate, but that involves listening as well as speaking and writing. Being an effective listener--not just a speaker or memo writer--is key to the process." _Mr. Allen

On the nature of in-house counseling:

"One of the questions I am asked is, 'When you made the move from general counsel to CEO, did you view the legal function differently?' Basically my answer to that is that I didn't view the role of counsel any differently at all. I've always thought that the role of a general counsel was to assure the legal health of the enterprise by helping the company (i.e., the client) to anticipate and solve the business problems presented by the various laws and regulations with which we are faced in this complex world. I think it's a pretty good analogy to compare a general counsel to a general practitioner in medicine who looks after the health of his patient.

"Where I did get a different perspective when I became Kraft's CEO had really more to do with the manner in which the in-house role was performed than the substance of the role itself. Specifically, that word 'solve' began to grow in importance from the day I became a client. And I became conscious of the fact that some lawyers, even ones who have very desirable professional qualities, tend to treat their client's problems as matters to be disposed of rather than problems to be solved. . .

"Some say that in-house lawyers should take the word 'No' out of their vocabulary. I don't agree with that. I think there are clearly times when the answer is 'No,' has to be 'No,' and it should be a loud 'No.' But I think the 'No's' should come only after a determined effort and active analysis, motivated by a problem-solving attitude." _Mr. Richman

. . . "[Y]ou have to learn how and when to say 'No.' Just saying 'No, you can't do this' doesn't cut it. There are many ways of saying 'No' by pointing out alternatives. You are expected to help the company make a profit. It may be in incremental parts but you have to be perceived to be doing your part. And by just saying 'No,' 'No,' 'No,' you are not going to help. You are just going to be considered an obstruction. You're just another 'typical lawyer.' You have to be part of the business, you have to be part of the team." _Mr. Hynes

And, in closing:

"The essence of the ancient and honorable profession in which we are engaged is what we all know as the lawyer-client relationship and that relationship consists, as it always has, of one

individual providing advice and assistance to another individual in an environment of trust and confidence. It really doesn't matter whether the lawyer is the head of a large and complex corporate legal function or that the client--or, strictly speaking, the representative of the client--is the CEO of a giant multi-national enterprise. What does matter is that particular lawyer-client encounter, and the hundreds and thousands of other lawyer-client encounters taking place in that company, are working satisfactorily; in other words that the client is receiving prompt, high quality, problem-solving assistance from lawyers who know the law and know the business. If they are working satisfactorily, then and only then will the CEO be receiving what he or she should expect from the legal function." _Mr. Richman

"[U]nder any circumstances, don't compromise your basic principles or your integrity. First of all, you lose your self-respect, but I will guarantee that you will lose the respect of the clients within the organization. If you cannot stand up for what you believe, your clients will soon not trust your judgment and not want to do business with you." _Mr. Allen

Working with the Corporate Client: Client Surveys and Law Department Marketing

Published by

American Corporate Counsel Association

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American Corporate Counsel Association

ACCA's Corporate Client/Counsel Survey

The American Corporate Counsel Association surveyed members and members' clients about the client/corporate counsel relationship. Sara Holtz, then General Counsel of The Clorox Company, and currently General Counsel of Nestle Beverage Company (as well as a member of ACCA's Board of Directors), developed the survey with Pamela Laird, President, PSL Marketing Resources in San Francisco. Ms. Holtz and Ms. Laird presented the survey's results at an ACCA Annual Meeting. ACCA has compiled the following article based upon those results. Attached to the article, for those who are interested in particular issues, is the survey form used, as well as the cumulative responses for each question.

What do corporate clients want from their in-house lawyers, and what can corporate counsel do to improve the client/counsel relationship? The American Corporate Counsel Association (ACCA) surveyed nearly 300 corporate clients¹ to determine how well the client/counsel relationship was working, and to solicit suggestions on how that relationship could be improved.

Overall, the survey respondents were very pleased with the client/counsel relationship. A full 97% of the clients surveyed rated the working relationship with their counsel as "Good," "Very Good," or "Excellent." That said, however, this survey indicates corporate clients may be more satisfied with the client/counsel relationship if counsel makes efforts to:

- stay in touch;
- hear the client out;
- look at the problem from the client's perspective; and
- speak in lay English.

Additionally, despite the diversity of the respondents' backgrounds, the survey indicates that three common and key attributes are linked to an excellent attorney/client relationship: Business Orientation, Responsiveness, and Good Communication. Business Orientation was far and away the most important of these attributes.

Business Orientation

Business Orientation was the attribute on which overall client satisfaction seemed to hinge. If Business Orientation was described as the best thing about the working relationship between client and lawyer, the working relationship as a whole was more likely to be rated as

¹ The clients surveyed represent a broad spectrum of corporate managers. About half of the survey respondents are upper level managers; the remainder classify themselves as middle and first line management. They oversee a variety of functions, including marketing, finance, manufacturing, research and development, and human resources, as well as general management. Similarly, these clients are representative of a wide range of industries, including finance, insurance, manufacturing, retail, health services, business services, communications, public utilities and construction.

"Very Good," or "Excellent." Conversely, if Business Orientation was cited as a trait to be improved upon by counsel, the working relationship was likely to be rated much lower.

Business Orientation, as described by the survey respondents, is the ability to approach a legal problem and resolve it with a full understanding of the client's business objectives; in other words, the capacity to confront a legal problem with a business person's perspective. Clients regularly look to their lawyers to help them find legally sound business solutions. One manager surveyed described Business Orientation as "understanding the client's business and objectives so as to achieve a better balance between legal and practical advice." The survey also showed that Business Orientation appeared to be especially significant to senior management.

Elements of Business Orientation, according to respondents, include: a good grasp of the client's business, practicality, the ability to focus on the "big" picture, flexibility, creativity in resolving problems, and being less risk-averse. Surveyed clients criticized lawyers who spend "too much time indicating why something can't be done, instead of looking for ways to do it"; who don't "recognize that all decisions involve risk"; or, who were "too concerned with trivialities." Conversely, those clients who were pleased with their counsel relationship praised their lawyers as trying as hard as I am to complete the task, not make it impossible with legal barriers"; being "practical and understanding the real world"; and "taking the time to gain a good understanding of our business."

Responsiveness

Rated by clients surveyed as one of the three most important qualities of a corporate counsel (although not as important as business orientation), responsiveness was also assessed by many survey respondents as the quality their attorneys most needed to improve. According to surveyed clients, responsiveness may be as simple as promptly returning phone calls. Other clients specified a need for faster turn-around, immediate consideration, and lack of procrastination by their counsel. One manager stated that he wished his lawyer would share his sense of urgency.

Prompt turnaround is not the only component of responsiveness. For the surveyed clients, responsiveness appears to be related to physical accessibility and availability. Many clients expressed concern that their corporate counsel were not easily reached. One client cited the best thing about his lawyer was the fact that his office was right next door! In this regard, clients also noted that they would like more frequent on-site visits by their counsel, and more accessibility to counsel by people in the field, or in other corporate offices.

While questions regarding responsiveness were a main focus of clients in describing their relationship with their lawyers, it is interesting to note that many clients who rated their lawyer's responsiveness poorly nonetheless were satisfied overall with their lawyer. This suggests that while clients are concerned about responsiveness, the trait doesn't appear to be a determining factor in rating the client/counsel relationship.

Good Communication

According to client respondents, a crucial trait that corporate counsel should bring to the client/counsel relationship is the ability to listen well and to communicate clearly and concisely. Good communication entails sharing and providing information to help solve the client's problems. One client explained it as "taking the time to explain options in lay terms, less lawyer-like, and not given to legal pontification."

This trait had the second highest disparity between the ideal situation, and the client's actual situation. (Responsiveness was the trait with the highest disparity between the ideal situation, and the client's actual situation.) When asked how his lawyer could improve the client/counsel relationship, one client contended: "He could listen." Not surprisingly, this client assessed his lawyer very poorly overall, and rated his working relationship with his lawyer as being much worse than any of his other working relationships.

One client, who was very pleased with his counsel, said that she listened to his input and explanation of the transaction or problem and took the time to explain his options in lay terms. The survey showed that putting aside "legalese," and communicating in plain English is critical to many clients.

Other clients rated brevity as important to the exchange. One manager found lengthy explanations of the problem-solving process superfluous, and preferred that his counsel get more to the heart of the matter: "Be more succinct. It's not always necessary to explain how you arrived at a conclusion; just the conclusion and a brief synopsis of any risk associated will suffice."

Conclusion

All of these comments are more easily said than done, and every corporate counsel knows that more is involved in successful client relations than can be controlled by good communication skills, business orientation and responsiveness. Client relations often suffer because too often the lawyer is viewed negatively as a bad-news messenger or nay-sayer. And sometimes, a client just has no interest in a cooperative relationship. That said, however, it may be advisable to explore ways to break out of the molds created by "negative" roles, and create new activities for clients to focus on: e.g. seminars, newsletters, and other opportunities through which you can share information and promote positive relations.

Many corporate counsel have begun active marketing campaigns to educate the corporate client, encourage better use and appreciation of the legal department, and improve client services and business initiatives. This book offers some solid suggestions for improving communication, increasing client awareness of law department initiatives and activities, and building personal development skills that will aid in improving the client/counsel relationship. We encourage you to contact ACCA about any resources or initiatives you have developed and would like to share with your colleagues.

Two Perspectives on Evaluating Service to the Corporate Client/Implementing Client Service Techniques

(Excerpts from the ACCA/HNBA Seminar for In-house Counsel held in conjunction with the 1997 Hispanic National Bar Association [HNBA] Annual Meeting)

Client in an Envi



[In his speech, Mr. Roster discusses a project for restructuring Stanford University's legal department. He aimed to reduce legal costs while promoting access to more cutting-edge knowledge through an innovative partnership with outside firms. For a more in-depth description of his project, see Reengineering the Legal Function, ACCA DOCKET Vol. 13, no. 5 (1995): 28-36.]

had a significant deficit in our budget, and I was told not only to correct the deficit but to try to cut an additional 10-20 percent.

Stanford is not a sleepy little place. With the medical center, we have \$2 billion a year in revenue, 15,000 students, and 8200 acres of land, some of which is developed to produce income for our educational enterprise. We have 100 corporate tenants, including the world headquarters of Hewlett-Packard and ALZA Corporation. We have 900 single-family faculty houses on leased land. We have an average of 250 cases of litigation or arbitration in any given year. We hold some 250 patents (including the patent on DNA splicing, so we still get a share of royalties on most products relating to DNA). Two hospitals account for three-quarters of a billion dollars in revenue, and we're in the midst of merging those two hospitals with the University of California-San Francisco, a negotiation that has been in the works for over two years. In the midst of all this is a university where we perform our fundamen-



Michael Roster,
General Counsel,
Stanford University

... I arrived at Stanford and immediately faced a variety of issues. A very complex dispute with the federal government had cost us \$32 million in accounting and legal support before I'd even set foot on campus, and many in the university blamed the legal department. In a way, people were shooting the messenger. When I interviewed nearly 80 people on campus in my first two months, I found that almost without exception everyone in fact loved their individual lawyer but disliked the legal department. Many felt we had become far too intrusive in the university. We also

MICHAEL ROSTER is general counsel at Stanford University and secretary of ACCA's Board of Directors.

Michael Roster and Gloria Santona, *Client Service in an In-house Environment*. ACCA DOCKET, Vol. 16, no. 1 (1998): 50-58.

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Service In-house Environment



...I started with McDonald's Corporation 20 years ago right out of law school. Our challenge at McDonald's has been to try to keep our law department competitive, and I think we've been successful in doing so by using a lot of the tools Mike Roster spoke about.

ATTAINING COMPETITIVENESS

When I started at McDonald's in 1977, we had just under 5000 restaurants in 24 countries. Today we have over 22,000 restaurants in 103 countries. This is not a commercial about McDonald's but rather a commentary on how things have changed. It took us 35 years to build our first 10,000 restaurants, and we built the last 10,000 in the last 5 years, so you can see how the pace of change has accelerated.

There are two realities of in-house legal practice in the '90s that we all have to face. The first

is that change is no longer a factor in the business environment; it's the reality of the business environment. We're all facing the forces of globalization, deregulation, and technological advances in our own practices in the same way the business world is. The second is a corollary to the first, which is "If you stand still, you will become obsolete." One of the most useful things I think children learn from video games is that if you stand still you get killed. That's good practice for life. Understanding the realities of change is the key to surviving in the '90s and beyond. You don't have to like these facts in order to deal with them successfully, but you have to accept them and integrate them into your thinking.

Over the last 10 years there have been many changes to the way we practice law. Most legal departments have traditionally been guided by three values: efficiency (doing things right); effectiveness (doing the right things); and excellence (providing high quality technical lawyering).

GLORIA SANTONA is vice president, deputy general counsel, and secretary of the McDonald's Corporation in Oak Brook, Illinois. She is chair of the Corporate Board of Advisors of the National Hispanic Leadership Institute.



Gloria Santona, Vice President, Deputy General Counsel, and Secretary, McDonald's Corporation

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tal missions of teaching and research. So Stanford's legal department faces the same pressures the legal department of a complex business would.

REEVALUATING STAFFING

I'm in my fifth year now. When I arrived we had an authorized head count of 26 lawyers and paralegals. We now function with 5 attorneys and no paralegals. We made the decision to focus the in-house services on the core businesses: education and medical services. (We are also in many ways a big real estate company; but real estate is not a core mission or business, so it was one of the areas I thought we could outsource.) No law firm or non-traditional law provider was likely to be anywhere near what the in-house staff could do in these areas, such as tenure issues, so we retained them in-house. We also looked for ways to partner with other providers to bring our costs down and simultane-

IT'S CRUCIAL TO HAVE A HIGH LEVEL OF EXPERTISE WHEN THERE'S NO ANSWER TO A MAJOR LEGAL ISSUE. AN ATTORNEY FAMILIAR WITH THE ISSUE CAN SAY, "WE'VE BEEN THROUGH THIS MANY TIMES; THERE IS NO ANSWER. GIVEN THAT, HERE'S WHAT WE RECOMMEND YOU DO."

ously increase our levels of elasticity and expertise.

Whatever you're managing, it is key to consider whether you have the expertise. In our case, there were times we weren't sure. When we had a complicated tax matter, we could spend a week researching all the tax issues and come up with a very good memo. But did we know we had the right answer?

A firm that has 10 or 20 medical centers and universities as clients and is familiar with the issues could say, "Oh, we've heard that question 20 times in the last week; here's the answer." It's crucial to have a high level of expertise when there's no

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Excellence in legal services has been grounded in the technical quality of legal services as defined by lawyers.

ANTICIPATING CLIENTS' NEEDS

There's a story about a man who, while driving through a small town, noticed a billboard with a target painted on it and a bull's-eye in the center. He observed more targets all over town on walls, garbage cans, and mailboxes. In each case there was a bull's-eye hit, so he was very impressed with the shooter's accuracy. When he asked to meet the town's marksman, he was surprised to be introduced to a ten-year-old boy. He asked him how he could have so accurate an aim at so tender an age. The boy replied, "It's easy. I shoot first and draw the target around it later."

Like the boy, we lawyers have been the ones drawing our own bull's-eyes. We established the criteria for judging the value of our services. But excellence in legal services in the '90s includes an important new factor: client service. Lawyers have had to redefine excellence to account for not only technical lawyering skills but also the ability to meet or exceed our clients' expectations.

Therefore legal service excellence in the '90s involves not only what advice is rendered but also how it's rendered, everything from our attitude toward our clients to how well we inform them about progress and alternatives, to our accessibility responsiveness, and billing practices.

In a world of accelerating change and increasing competition, it's clear excellence anticipates having processes in place so that a department can continue to deliver high quality legal services in changing times. While many law firms and legal departments continue to address change on an ad hoc basis, the successful ones implement and institutionalize systems for dealing with perpetually changing demands and expectations. Good planning is more cost and time efficient than good reacting.

Our job as department leaders is not only to ensure that things go right today but that we set the stage for tomorrow. It's critical that we have a vision of where we want to be in 8 or 10 years, one that contemplates how the department can and will have a positive effect on the company's business.

A department or business can't advance while in a reactive mode. Leadership requires one to be proactive, establishing a vision for the organization

in the context of clients, staff, and the business environment; communicating that vision effectively; providing the resources to achieve it; and motivating the staff to move toward it. Too many of us confuse leadership with management or control. A leader is not a controller but a catalyst, someone who helps the organization and its employees reach their potential.

In its simplest terms, every legal department's vision is excellence in serving its client. Although the best technical legal skills are a given, the definition of excellence we should strive to create is value for our clients. I say *creating*, not *adding*, value. Each of our legal departments has the opportunity to be viewed as something more than a contributor to overhead. Today's competitive environment requires our clients to operate in a world that is constantly changing and defined by litigiousness, complex regulations, and the challenges of globalization. Lawyers are now uniquely situated to go beyond merely supporting our client's business objectives to directly influencing and advancing them.

In order to create value for our clients, we need to put ourselves in their shoes, understand how they perceive our service, and try to anticipate what they will need from us both in the short and long term. Although customer satisfaction surveys are a tool, they're only the beginning. Our legal department staff is the best means for understanding our customers' needs and wants. If we are going to ask them to be our department's eyes and ears as well as the primary means of providing services, we need to make sure that we have the best, with the right training and tools, and a full understanding and support of our vision.

FLEXIBLE STRUCTURE

All this requires planning. Even though all legal departments plan, the planning process is often limited to setting goals and objectives, describing action steps, and allocating resources. The process is often more focused on head count and cost savings than it is on providing better service. But the planning process is an ideal time to take a broader view because it's the time when department leadership can reassess client needs, the company's strategic direction, the general business and legal environment, and trends in the profession and in tech-

answer to a major legal issue. An attorney familiar with the issue can say, "We've been through this many times; there is no answer. Given that, here's what we recommend you do."

FLEXIBILITY

We also didn't have elasticity. We were spending approximately \$8.5 million a year on core legal services (\$14 million overall), and about 85-90 percent of our core expenses were inside, so we had no ability to shift resources. One year, for example, we had a number of environmental matters. Before I arrived, senior administrators were already sending me documents concerning a state enforcement action against the university. We ultimately paid a \$1.2 million fine, but it consumed three years of negotiation to get there.

We also needed elasticity with respect to the overall budget. We had to consider how to shift resources from one area to another. For example, \$600 million of construction on campus in two years means massive requirements in real estate development and construction. We're also shifting rapidly to external learning. We already have 900 elementary and secondary school students around the nation being taught electronically by our faculty every day. In five years we'll probably have several thousand people involved in off-site learning via the internet, CD-ROM, or other delivery methods. That requires beefing up certain legal areas; it also means a need to cut back once the basic legal work is done. That's very difficult if you have everything locked up with one law firm or in-house.

BENCHMARKING

That brings us to economics. Our president and others in the senior administration felt we were spending too much on legal services. So I started benchmarking. In every industry, I believe that there's an almost harmonic identity about the amount of legal services that the institution wants and needs. Management can present different arguments, and you play all kinds of funny games for a while to bring the numbers down or move things around, but ultimately it's going to come back to a reasonably predictable number. In my industry, education and medicine, approximately 0.58 of one percent should be spent on legal services. It turns

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out — and this helped me a great deal with our administration — we were at 0.52 when I arrived. Most were very surprised to hear that.

I also found an article that argued that approximately 0.33 to one percent of annual sales expenses should be spent on the legal function. I asked the author how he calculated this figure because I wanted to know what kind of entity should be on the high and low side. I'd assumed that large chemical companies would have high legal expenses and peaceful places like mine would be pretty low. But he said that the companies that are very collaborative, engage lawyers in almost every step of decision-making, and conduct a lot of focus groups have astronomically high legal costs. It is costly when a company meanders. In my case, this was terrible news because a university is about the most collaborative place you will find. Nevertheless, our numbers looked pretty good.

TESTING COSTS: THE OUTSOURCING PROJECT

As I began work on my directive to cut costs, I decided to test our internal costs against an outsourced and partnership arrangement. I invited 14 law firms to participate in a bid process. The firms were asked to bid on any or all of three levels: total outsourcing, by component, or providing a backup service. We also told them to include litigation. Moreover, the bulk of the work was to be done at a fixed price. (Each component now has a test for when a matter falls out of the "box" — that is, when additional work on a matter will no longer be included in the basic retainer but will be billed in some alternative way.) All showed they could do a very effective job on the pricing. We ultimately decided not to outsource completely to one law firm, although seven firms had the capacity for it, because we did not want to become captive to a single vendor.

In the bidding process we used what we call a matrix budget process, and now we use it as a monthly and annual guideline as well. Across the top are the names of our 20 key internal clients: medical center, library systems, the management company that oversees the endowments, and so on. Down the left side are the substantive areas. With our allotted budget total in mind, we spread out what subject areas we're going to need and distribute our funds among them. We do the same with the internal process.

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nology. It's also an occasion to reassess your organization in terms of these external factors. You can use the planning process as an opportunity to validate the department's vision, align the management team, and focus on the department's ability to adapt to the changes within the company and its business environment.

It's also the right time to focus on your organization — your department's structure, staff, and skills — to evaluate changes you need to make to cope with factors affecting your legal practice. Structurally you should strive for stability, but not at the expense of flexibility. For example, at McDonald's we have a staff of over 70 people who handle nothing but real estate transactions. Our lawyers are assigned responsibilities by region. But regional needs vary. So we put regional lawyers on larger teams that are responsible for broad divisions of our company so that we can better pace our work flow. And when workloads exceed the norm, we staff with temporaries.

We've also created what we call a SWAT team, a lightly staffed group that is prepared to pull together a virtual team composed of full-time staff, and outside vendors like title insurance companies, surveyors, and temporaries in the event of a major real estate transaction. The result is a stable organization with the ability to adapt quickly to changing client needs.

SCORECARDS AND GROWTH

The processes of reviewing our staff and the department's skills are inextricably linked since a legal organization's capital is largely its intellectual ability. In today's client service environment, we need people who are substantively knowledgeable and experienced, have good interpersonal and communications skills, understand our business, and display leadership qualities. In addition, we need people with initiative. Lawyers who can fix a problem are common; it's harder to find those capable of determining how to redesign a process or approach to avoid problems.

Once we hire the right people, we need to help them develop their skills and mature professionally; we need to keep them motivated while getting the job done. At McDonald's, in addition to semi-annual performance reviews, we do a skills assessment with every employee at least once a year; it

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Of course we're off in some areas, but in the last two years in virtually every one of these boxes where the subbudget might be \$40,000-\$60,000, we've usually come within \$100-\$1000 of budget. For my medical center budget, which is approximately \$2.1 million, we're within \$1000 total for the year. In the process, we try to avoid any huge amount of the bureaucracy in monitoring the firms.

We also give our clients a quarterly bank statement, which they didn't used to get. We tell them that, all things being equal, here's what we've pre-paid for their services. We're not charging most of them, or if we are, we're charging them a fixed price at the start of the year. If you "prepay" instead of trying to nickel and dime the clients' profit center every month, it changes the dynamics dramatically. So knowing they have prepaid, let's say \$100,000 for a basic service, the clients get to be very wise users of legal services. They share with us the burden of staying within budget.

I've designed a telephone directory that perhaps best illustrates what the legal department now looks like. It's a virtual legal department. The directory gets sent to all the major internal clients — that is, some 200-300 faculty and administrators who regularly interact with the legal department. They know they can call anyone on the list without going through an internal gatekeeper. More importantly, most have gotten to know "their" lawyer or lawyers.

COMMUNICATION

We're looking at other ways to improve our client relationships and interaction. We hold quarterly assessment meetings with them to talk about the budget and our ability to meet their needs and their concerns. That's a very important way to start. "What's on your mind right now — both how are we performing and what legal problems do you have that we should discuss?" We try to give them two or three tips. Through the quarterly assessment meetings, we also are hoping to hear what's in the pipeline so that we can react quickly.

Periodically, I send out email or voice mail to the attorneys on staff and at the law firms asking, "Have you talked to three of your key clients this month? Have you asked them what's on their minds and what changes in the law they want to know about?"

We try to circulate law firm mailings to our clients. Our director of legal services, a nonlawyer,

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usually precedes our planning cycle by a month or two, so when we discuss our organizational needs for the next year we have a current assessment. We can use this assessment of our internal skills to determine what additional skills we need to develop within the staff or where we need to supplement our internal staff with outsourcing.

Our staff is our primary means of achieving excellence; but they can't get there or be efficient and effective if we don't give them the right tools. Thus part of the planning process involves a look at our resources, processes, and technology. We look for ways to standardize documents and processes and have them performed at the lowest possible level, determine whether there's technology available to enhance responsiveness or work more efficiently, and decide whether any legal services can be done more effectively by an outside firm.

**YOU CAN USE THE
PLANNING PROCESS AS AN
OPPORTUNITY TO VALIDATE
THE DEPARTMENT'S VISION,
ALIGN THE MANAGEMENT TEAM,
AND FOCUS ON THE
DEPARTMENT'S ABILITY
TO ADAPT TO THE CHANGES
WITHIN THE COMPANY
AND ITS
BUSINESS ENVIRONMENT.**

Finally, we establish measurement systems to help gauge progress toward our vision. The old adage that you get what you measure clearly illustrates that measurement systems strongly influence the behavior of both managers and employees. We've probably all seen the wrong behavior motivated by a badly designed measurement system.

Having struggled with a variety of approaches, we settled on the balanced scorecard approach. This method was introduced in two *Harvard Business Review* articles.¹ The concept is to provide operational measures along with financial

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knows the whole client base and what items should be routed to whom. But there's no way around the fact that, if you're the client, the memos are tedious unless a particular one hits on a problem you currently have.

Finally, we're starting to use technology to improve client service. You should know I'm among the highest skeptics about technology. The techies do interesting things, but they often have very little to do with what the user wants.

With that in mind, a couple of months ago I met a fellow from GE who has designed a legal department intranet. It's wonderful because it addresses the users' real needs. One section, for example, highlights the kinds of issues clients may have. If you're overseas, there's a section that addresses international issues. If it's visas, you click on visas, and there's practical legal advice on visas and the names of three law firms already identified in that country that can give visa advice, the firms' discounts, and links to the firms' sites with the contacts' names.

We're beginning to develop something similar. Our hope is that when clients get to the attorney, whether on my staff or at a law firm, they will already be reasonably educated about the issues as a result of the material on the website. They will understand the key issues we're going to talk about, which will elevate the quality of our advice and keep our costs down. We're also going to look delivering memos electronically. Several of our law firm partners are already doing this.

We're pleased with the project. It's a big change in educating people about what we're doing and how we're doing it and requires a fairly major change in the way law firms deliver their services. In the end, my hope is that we all can get back to basics — that is, giving the client the type of effective advice that is needed — and that we all can enjoy practicing law again. ■

McDonald's Cont'd

ones. Operational measures focus on elements like customer satisfaction, internal processes, innovations, and improvements. These help measure progress toward your vision and strategic goals.

I don't think there's one perfect measurement system for every legal department since most departments are in different stages of evolution. The key is to focus on four areas: how your department is doing financially; what progress is being made in your quest to achieve excellence; how you're doing from your clients' perspective; and whether you're improving your clients' services and creating value for your clients. The scorecard needs to be reevaluated every year and updated according to current situations and circumstances.

CONCLUSION

I've briefly set out some of the approaches that we found to be effective in helping to keep our legal organization competitive for the future. There's no one right way to do it, but it's clear a few basic principles apply. First look around. Understand the business climate and be responsive to changes in the external environment. Second, have a client-centered attitude. Third, communicate a clear picture of where you want your department to be in the future and motivate your staff to get there. Fourth, invest in your staff — they're the primary means for your department to achieve its vision. And, finally, use measurements to help determine whether you're making progress. ■

NOTES

1. Robert S. Kaplan and David P. Norton, *The Balanced Scorecard — Measures That Drive Performance*, HARVARD BUSINESS REVIEW, Vol. 70, no. 1 (1992): 71-79 and *Putting the Balanced Scorecard to Work*, HARVARD BUSINESS REVIEW, Vol. 71, no. 5 (1993): 134-47.

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ISTANT, DIFFIDENT, DETACHED, AND DARNED expensive are the four Ds formula for legal department disaster. As budget pressures increase, personnel costs mushroom, and the complexity of legal issues multiplies, legal departments fall within the cross-hairs of overhead reduction. To respond, in-house lawyers must develop a consistent philosophy and culture,

Both Jeffrey W. Carr and James Lovett are associate general counsel of FMC Corporation. Mr. Carr oversees the legal affairs for FMC's Energy Systems and Airport Systems business groups. Mr. Lovett specializes in antitrust and litigation matters for the corporation as a whole.

Getting Closer to the Business: How to Foster Innovation

imbued in the organization, to deliver legal services that efficiently provide business solutions. We must recognize that our role is to support the corporate business, not to support bureaucracies (especially a legal bureaucracy) within the business.

This article uses the experience of one law department, that of FMC Corporation, to show how integration with the business teams—an active philosophy of being closer to the business—can replace the dreaded corporate staff moniker with status as an integral part of the operating business. With a cultural change based on a consistent philosophy, in-house lawyers can convert the dreaded Ds into the coveted Ps: proactive, progressive, and professional.

By Jeffrey W. Carr
and James Lovett

The importance of commitment to a consistent philosophy and culture is widely recognized in business literature, such as in *Built to Last* by James C. Collins and Jerry I. Porras.¹ Because a law department forms part of a corporation's business, this commitment is also important for law department management, especially because legal teams consist entirely of people. People work more effectively and with more enthusiasm when they understand the reasons why they are working, when they have the freedom to innovate, and when they can see tangible benefits from those efforts. It is like the difference between the professional athlete who thirsts to win and one who simply wants to collect his or her paycheck.

Jeffrey W. Carr and James Lovett, "Getting Closer to the Business: How to Foster Innovation and Value Through a Consistent Culture and Philosophy," *ACCA Docket* 19, no. 1 (2001): 64-77.



**and Value Through a Consistent
Culture and Philosophy**



This emphasis on a consistent philosophy and culture is not at odds with the use of metrics and other numbers and processes: other articles in this issue of *ACCA Docket* show how measurable metrics and processes provide important tools to help corporate counsel succeed. Metrics and processes in a vacuum, however, simply fall within Disraeli's third level of confusion (there are lies, there are damned lies, and then there are statistics). Corporate counsel must choose and use metrics as part of an overall philosophy and culture that are aligned with the counsel's business.

EXAMPLE OF THE LAW DEPARTMENT AT FMC CORPORATION

FMC Corporation is a diverse global chemical and machinery company based in the United States, with corporate headquarters in Chicago and sales and operations in more than 100 countries.² A diverse in-house legal team serves this diverse international business. In 1993, this legal team included nearly 50 lawyers clustered in Chicago and Philadelphia. Today, even though FMC's sales have increased nearly 25 percent, FMC has fewer than 25 in-house lawyers dispersed among the corporate and business unit headquarters.

To be more effective with fewer resources, the FMC law department has transformed itself in recent years around the culture of being ever closer to the business.

This transformation has led to both significant cost savings and higher satisfaction with legal services by business managers according to survey results. As Robert N. Burt, FMC's chair and CEO, recently stated in a letter to FMC lawyers:

The restructured department has allowed for closer partnership with our businesses and more

customer-focused service. In addition, you've cut legal spending in half over the last five years, contributing positively to FMC earnings and return on investment. I hope your work is even more rewarding—and more fun—as a result of your accomplishments. And I hope you are as proud of your successes as I am proud to be associated with you.

These results were not achieved simply by announcing that all lawyers henceforth will be closer to the business. These results stemmed from three main types of actions. First, a complete reorganization of the law department thrust legal team members into the business. Second, these business attorneys became directly accountable to the businesses for expenditures, strategies, and results. Third, once the business attorneys were aligned with the business and motivated directly to meet business needs, a spurt of innovations among these attorneys generated both improved service and lower cost at the same time. These actions have increased the visibility of the legal team through more intimate involvement in the business, and the combination of increased visibility and improved service has led to a higher regard among business leaders for a legal team. The increased involvement of and regard for legal team members in turn led to a higher level of professional satisfaction among the corporate legal team.

REORGANIZATION BASED ON A CULT-LIKE CULTURE OF BEING CLOSE TO THE BUSINESS

Successful implementation of legal management techniques depends on a structural organization of the legal team that reinforces those techniques. In the case of FMC, this imperative meant reorganizing the legal team to be more integrated into the business, as opposed to being a separate department. The purpose of the new organizational structure is to encourage lawyers (1) to develop a thorough understanding of and even to participate in developing the goals and plans of the business, (2) to think through with the business managers the legal implications of those goals and plans, and (3) to work with the business managers to provide the legal support to achieve those goals. In this way, the lawyer becomes an integral part of the business team in the same way that a financial manager, a

production manager, a sales manager, a research and development manager, and so forth would be an integral part of the business team.

The FMC legal team has taken the following organizational steps to get close to the business:

- The law department has been reorganized from functional lines, such as patent lawyers, commercial lawyers, international lawyers, and so forth, to legal teams allied with business groups. Today, the only exception to this reorganization is a few specialists working across the company in support of the teams to achieve economies of scale.
- Two thirds of the lawyers physically have moved their offices to be with the other managers of the business teams they are supporting, across the country in some cases.
- Lawyers participate in strategic planning of the business and the planning on tactical operations to achieve strategic goals. Lawyer involvement with this process helps to identify what legal services are necessary to help the business and to decide how to deliver those services most effectively and efficiently. This proactive involvement also encourages cost-effective counseling at the front end, as opposed to damage control later on.
- Lawyers participate in regular meetings of the management of most business groups. All FMC business units have annual operational reviews with corporate management and most have monthly business reviews with group level management. The lead business lawyers generally have an active role in those meetings, providing information on pending legal issues and ongoing advice and input.
- Lawyers participate in acquisition planning and negotiations from the earliest stages. Generally, the in-house attorney responsible for the particular business unit is the legal lead on all acquisitions and is responsible for marshalling and managing the legal assets required. Often that same lawyer is actively involved as an important member of the transaction negotiating team.
- Lawyers allocate internal and external legal costs incurred for each business division to that division.
- Most lawyers have dotted-line reporting to a business manager, although they continue to report through the legal team ultimately to the senior vice president and general counsel.
- Lawyers are encouraged to be generalists with a

specialty, enabling them to be general legal counsel for an operating business unit and also to specialize in a subject matter of special concern to that business unit. This arrangement creates a network of specialists that can consult throughout the company.

- Lawyers have reorganized the corporate compliance program so that they work with business managers in each operating division to tailor implementation of the overall corporate responsibility standards to the specific needs and challenges of that division, including conducting training and audits on an ongoing, as needed basis.

GETTING CLOSE TO THE BUSINESS MEANS GETTING YOUR HANDS DIRTY

The goal of getting close to the business also drove FMC's law department's decisions on external versus internal staffing by crystallizing recognition that the comparative advantage of in-house lawyers was knowledge of the business. As a result, the law department decided that in-house lawyers personally should do work in which the added value relied heavily on knowledge of the business, knowledge of the managers of that business, and a deep understanding of business objectives.

For that reason, FMC lawyers do most acquisitions and joint ventures entirely with in-house counsel. At FMC, acquisitions and joint ventures often are an important part of the business strategy, and in-house counsel understand the business and the business objectives. Indeed, given that many acquisition targets are competitors or suppliers, in-house counsel often have knowledge of the target, as well. This model works for FMC for two reasons: (1) FMC is large enough to support in-house specialists in antitrust, employment law, and employee benefits to support general acquisition lawyers, and (2) FMC's strategic focus is on doing smaller acquisitions for ease of assimilation. Even for larger acquisitions for which outside counsel may be necessary for their numbers or more specialized resources, FMC in-house lawyers lead the legal team in a highly hands-on manner.

FMC has also pursued intellectual property ("IP") portfolio management as a concept involving not simply technical personnel, but also marketing, sales, and management, along with outside counsel. Again, in-house

BY ALLOCATING BOTH INTERNAL AND EXTERNAL COSTS, THE FMC LAWYERS HAVE BEEN ABLE TO DRIVE EFFICIENCY BY MAKING COSTS AS VISIBLE AS POSSIBLE. THIS VISIBILITY HAS CREATED OPPORTUNITIES FOR COSTS SAVINGS TO BECOME MORE EVIDENT TO THE BUSINESS.

counsel lead this effort because of their knowledge of the business, including its overall IP portfolio, and business objectives. We use outside counsel to provide the IP headcount that we cannot afford in executing the strategy of the in-house IP manager.

Promote Accountability

Full implementation of a culture of getting close to the business involves organizational decisions that may create discomfort for some lawyers by exposing the legal team to criticism from the business. For example, FMC had traditionally not allocated internal legal costs to individual businesses. The FMC legal team suggested and implemented revised internal accounting practices that would allocate both internal and external costs to the internal business clients. The legal team took the initiative in this regard rather than reacting to a mandate from corporate headquarters or the business, the more traditional drivers for such internal responsibility allocation initiatives. Although this step exposed lawyers to potential criticism for more direct accountability for the actual costs of legal services, it was an essential step to a dialogue with operating business managers about the value and cost of those services. Of course, from the business's perspective, what matters is the total cost of legal services, and the in-house/outside counsel distinction is only a means to the end of efficiency. By allocating both internal and external costs, the FMC lawyers have been able to drive efficiency by making costs as visible as possible. This visibility has created opportunities for costs savings to become more evident to the business.

Lead from the Front

Another example of exposure to criticism has involved having in-house lawyers, rather than outside specialists, lead the matters that are most important to the business. Even when also using outside specialists, in-house lawyers lead the team and take responsibility for the most important judgment calls. The upsides of this approach are that in-house lawyers get credit for legal victories and that business managers grow to rely upon their in-house lawyers' judgment. The downsides are that this approach precludes the defense of "but we hired [insert your favorite firm]" when legal matters go poorly and that lawyers perceived as not exercising good judgment may not last long. Overall, however, the experience of the FMC legal team has been that business managers appreciate and value the willingness of their legal team to step up to the plate and that, with good communication, they come to understand the risk inherent in certain legal matters just like the risks inherent in other aspects of the business.

Be Close to Your Business

FMC's particular decisions regarding reorganization of the law department stemmed from the particular business of FMC. Other companies having different business dynamics and objectives might find a different approach more suitable. For example, an insurance company with a large volume of repetitive litigation might find it more economical and easier to achieve business objectives in litigation by using an in-house litigation model, such as a captive law firm. The point is not that a particular technique is ideal for all situations, but rather that a company could best tailor corporate legal management techniques to a particular business by having the lawyers closely integrated into the business.

HOW BEING CLOSE TO THE BUSINESS LEADS TO INNOVATION AND EFFICIENCY

Once closely integrated into the business, not only does the corporate legal team become aligned with business objectives, but also it confronts those objectives and their obstacles daily. The necessity of achieving those objectives then naturally leads to developing innovative solutions to achieve these objectives in a cost-effective manner. Legal team management, however, must foster a willingness to break away from the past to try new things, even radical new things.

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The corollary to innovation is the willingness to jettison or change those experiments that fail and to build upon those that work. Many experiments can begin as an incremental change or a change in only some areas of the company. The company can abandon these incremental changes if the results are not promising, or it can extend the changes to the rest of the company if they are successful. Constant experimentation is key: what looks in hindsight like a brilliant strategy may be only the “result of opportunistic experimentation.”³ The remainder of this article discusses some of the experiments at FMC and their results. While others may benefit from FMC’s experience, the main goal is to illustrate the process of experimentation, using examples drawn from the management of litigation, intellectual property, the compliance program, and the use of nonlawyer legal staff.

Litigation

The FMC legal team has experimented repeatedly with litigation in recent years to achieve business objectives more effectively and at lower cost. With continuous experimentation over the past five years, FMC has been able to cut litigation costs by half. After many years of using discounted fees for service, FMC switched several years ago to a two-part program. The FMC legal team chose a single outside counsel to handle all litigation for a specific region of the country. The FMC legal team took certain types of repeat litigation with similar issues, such as asbestos cases or product liability cases for a particular product line, out of the regional “pots”

of litigation and concentrated them with an individual lead lawyer to maximize consistency and efficiency.

Under this program, FMC paid counsel discounted fees for services up to a maximum cap for all cases assigned to the counsel. The idea was that FMC would get discounts for concentrating litigation in a small number of firms and that total fee caps for all cases would prevent aggregate budget overruns. On the other hand, firms benefited in the partnership by increasing their amount of work and the predictability of their work and gained the opportunity to spread the risk of the fee cap by offsetting cases with unexpected expenses with cases that went unexpectedly well. The program helped promote early resolution of cases because the caps were set at levels that could only be met if many cases were resolved, while the discipline of in-house counsel management helped ensure that only favorable resolutions were accepted. Over several years, FMC had substantial success in reducing litigation costs with the fee structure. The success of this program over time in reducing the number of cases undermined its effectiveness, however, because each firm no longer had enough cases to spread the risk of the fee cap.

FMC has responded with further experiments to further reduce its litigation costs by better aligning the interests of outside litigation attorneys with the company.

- FMC has begun to negotiate discounted hourly rates with outside lawyers that include disbursements. This approach creates an incentive for outside lawyers to minimize such costs because they cannot simply pass the costs through to the client. A few costs, such as out-of-state travel and court reporter fees, are exempt from this rule and are instead subject to typical guidelines.
- FMC compensates the outside firm for each litigation matter based on agreed upon budgets and structures. The outside firm retains local counsel as necessary within its own budget for the matter, without separate billing to FMC.
- The outside firm and in-house counsel use decision tree risk analysis to develop analyses of the probable value and the key decision points of a lawsuit. These analyses help lawyers communicate with the business leaders using MBA-like tools with which business leaders are comfortable.

FMC also has begun two major, concurrent experiments with litigation management models in

which the outside firms have a risk/reward cost structure designed to align the corporate objective of achieving success at the lowest possible overall cost to the corporation with the law firm's objective of its maximizing profits. In defense situations, this amount means at the lowest possible total disposition cost, including legal fees, resolution costs, and the risk of future litigation. When FMC is the plaintiff, this amount means the highest net recovery, less fees and costs or obtaining other less tangible, yet still defined goals. A key goal of each experiment is to provide incentives for early attractive settlements.⁴ FMC's in-house counsel encourage and control alternative dispute resolution initiative and creative settlement discussions because they are in the best position to balance the business objectives, the inherent dispute resolution risks, and the cost of conflict resolution.

Litigation Experiment No. 1

The first experiment with risk/reward structures is being conducted by the legal team responsible for FMC's \$1.5 billion energy and airline systems businesses ("ESG/APSD"). As opposed to FMC having internal litigators devote significant time, the outside firm effectively staffs this function, and the ESG/APSD in-house lawyers become the quarterbacks of the litigation team to set the strategy with the business management and to implement the tactics with the firm. The outside firm is on a retainer to ensure attention, to support reporting requirements, and to smooth out wild variations in outside litigation expenses. In addition, the outside firm is encouraged to use service providers with whom FMC may have preferential supply arrangements, such as couriers, photocopying companies, and so forth.

A key element of this approach is the FMC proprietary system known as FMC Alliance Counsel Engagement System ("FMC-ACES"), a system designed to create a true risk/reward sharing alliance. FMC-ACES requires a clear statement of the objectives, a flexible and continuous budgeting/target cost development/management process, and the ability of the firm to earn a bonus for success while having some of the compensation at risk. Unlike a fixed cap approach, which can create disincentives to follow through, FMC-ACES seeks to capitalize on the area in which FMC and firms converge, success, while recognizing that our interests



FMC HAS HAD SUBSTANTIAL SUCCESS IN USING ON-THE-JOB TRAINING TO TEACH NONLAWYER PROFESSIONALS, WORKING WITH LAWYERS, TO MANAGE LITIGATION, TO OVERSEE COST MANAGEMENT AND BILLING SYSTEMS, AND TO CONDUCT KEY ASPECTS OF ACQUISITION DUE DILIGENCE OR THE CORPORATE SECRETARY FUNCTION.

diverge in that what firms are traditionally organized to sell, hours, is not really what FMC is interested in buying.

FMC-ACES also encourages the firm to focus on activities that will result in success, not activities that will necessarily maximize hours, and frees the firm and FMC lawyers from the mechanistic tyranny of detailed billing and billing codes. The key to the system is a mutual trust and a shared sense of the objective. Under this system, both the outside firm and the FMC lawyer are forced to convert from the traditional supplier-buyer concept of budgets to a true alliance model in which targets may be adjusted to reflect unanticipated events, success is rewarded, and risk reapportionment drives efficiency.

FMC's ESG/APSD legal team firmly believes that it is far better to pay a firm a higher effective hourly rate for a fewer number of hours than a capped, fixed, or discounted fee structure in which the hours are uncapped. What many outside firms fail to realize is that, in almost every situation, FMC as the client is not in the business of managing dispute resolution. Rather, FMC's primary objective is dispute avoidance with the secondary objective of damage limitation through efficient dispute resolution processes when we have failed to achieve that primary objective.

Litigation Experiment No. 2

The second experiment with risk/reward structures is being conducted with the remainder of FMC's litigation portfolio, which contains a much

larger number of cases. In this experiment, nearly all litigation is concentrated with five law firms and under an individual lawyer at each firm. For each firm, the following alternative fee structure is used:

- In the first 90 days after a lawsuit is filed, a fixed fee covers evaluation of the case, efforts at early settlement, and initial responses through pleading and/or discovery. FMC pays a bonus if the case is successfully resolved within the first 90 days.
- If the case is not successfully resolved within 90 days, the knowledge of the case at that point is used to develop an agreed upon budget with outside counsel. If a successful resolution is achieved within a set time period at less than 90 percent of the budget, then outside counsel receives half of the savings as a bonus. If costs exceed 110 percent of the budget, then outside counsel receives only half of the overrun.

The goal of this two-step program is to provide incentives for successful early resolution, while avoiding any perverse incentives to stop needed work. The program is managed by two internal legal professionals, who combine practical litigation experience with knowledge of the business and relationships with business counsel managers. The fixed fee with potential bonus during the first 90 days creates an incentive for quick resolution and allows both in-house and outside counsel to learn the case before deciding on an appropriate budget if early resolution is not possible. The carrot-and-stick budget approach in the second phase keeps the incentives pointed toward efficiency throughout the remainder of the litigation process. Using this program with only a small number of outside firms not only generates buyer power, it fosters a partnership approach that generates the trust necessary to develop fair budgets and appropriate definitions of success.

A key element of these two experiments is to learn from the successes and failings of each one and to apply the results to the entire company. This philosophy of experimentation, jettisoning failures, and building on successes is being applied in other areas as well.

Intellectual Property Administration

The machinery and chemical businesses are using very different IP administration methods, each modified to meet the needs of the particular businesses. For example, FMC's agricultural chemical

business handles the preparation and prosecution of patent applications internally, and certain other chemical business units have outsourced the entire IP process, including the three Patent Ps: preparation, prosecution, and portfolio management.

FMC's machinery businesses, on the other hand, use a hybrid system that outsources preparation and prosecution to firms while using internal assets to accomplish portfolio management. The same closer to the business philosophy used throughout the legal team also drives the hybrid system. FMC's chemical businesses tend to be larger and more centrally located where the in-house IP attorneys can be physically and mentally integrated with the business, while FMC's machinery businesses tend to be organized in smaller, decentralized locations where outside counsel may be better situated to interact with the inventors and engineers on a more personal basis, with the in-house FMC counsel riding circuit and acting as the overall organizer of a legal team consisting of internal and external assets.

Compliance Program

The FMC compliance program has emerged as an in-house counsel business partner responsibility system in which the lawyers assist the business managers in meeting their compliance obligations through education and involvement, as opposed to a more traditional adversarial investigation/audit system. Key elements of this program involve intranet training modules and flexible personal training on a focused, as needed basis, coupled with a more formal annual compliance certification process in which the individual business unit managers, with in-house counsel assistance, examine and review compliance objectives and challenges on a continuous basis.

Expanded Role for Nonlawyer Team Members

Corporate legal teams are ideally situated to maximize the value from and career opportunities for nonlawyer legal team members. Unfettered by law firm pressure to maximize billable hours at the highest rate, FMC has had substantial success in using on-the-job training to teach nonlawyer professionals, working with lawyers, to manage litigation, to oversee cost management and billing systems, and to conduct key aspects of acquisition due diligence or the corporate secretary function.

Continuous Experimentation

The key to continuous service and cost improvement is not so much any particular innovation as it is the commitment to continuous experimentation itself. Indeed, alignment with the business helps foster innovation not only by creating a daily confrontation with the issues that need to be addressed, but also by providing an opportunity to learn by analogy from how business managers address their challenges. For example, by the time this article goes to press, FMC will have conducted its first experiments with reverse internet auctions for certain outsourced IP-related legal services. Similarly, both of the current litigation programs will be in the process of refinement for the next calendar year. FMC uses such continuous experimentation to continue to improve the quality and cost-effectiveness of the legal team.

DIALOGUE WITH BUSINESS MANAGEMENT ON LEGAL TEAM PROGRESS

Being close to the business, as defined above, makes natural the process of selling business management on the value of the legal team. Because lawyers are involved with the business every day, business managers naturally see their effectiveness or the lack of it. Similarly, if legal costs are clearly visible to managers because those costs are allocated to their business unit and not just amalgamated at the top level, it becomes natural to engage in a dialogue about whether the business is receiving value for the legal costs incurred. If managers of business units believe they are receiving value for the cost of legal services, that opinion filters up through the business management of the corporation, and the CEO does not wonder why legal costs are \$X million.

Success in reducing costs and improving service makes it easy to trumpet that success to business management. If the legal team has reduced costs five years in a row, then the legal team can point to objective facts in support of their cost effectiveness. Conversely, it is literally impossible to reduce costs each and every year once the legal team has rendered the fat from the system and managers have felt the effects of lawyer salary costs. Nonetheless, after managers better understand and appreciate the value of in-house counsel through day-to-day involvement, when costs do increase, they generally manifest as period variables from the dance of lawsuits and transactions, which is again a variation

that our business people can and do understand.

To assist in the dialogue with business managers, the FMC legal team uses two main types of quantifiable tools to measure its progress and shares the results of these measurements with business managers. First, the FMC legal team seeks to measure its performance against external benchmarks, such as the results of various corporate legal spending surveys. Second, the FMC legal team compares itself to past versions of itself. With respect to costs, this comparison should be easy because companies often compare costs from year to year. In reality, however, the process is complicated by FMC's ever-changing business portfolio and restructuring of operations. FMC also is working toward an improved legal management information system to help it evaluate more specific costs over time, such as trends in the cost of obtaining patent protection in specific countries. With respect to quality of service, FMC seeks to benchmark its performance over time with an annual survey of business managers and with quantified metrics on litigation results, such as tracking the average cost of resolution of products liability litigation, broken into cost of the legal process and substantive result.

BEING CLOSE TO THE BUSINESS AND PROFESSIONALISM

The unifying philosophy of getting closer to the business reinforces a strong culture within the legal team that both is consistent with and exercises a positive influence on the overall business culture. As opposed to the "Kingdom of No" perspective many managers have of their corporate legal departments, connecting legal teams more directly with the business encourages the in-house counsel to search for helpful and creative solutions to difficult issues. When one has a personal stake and a personal connection with the business itself and the people involved, the natural human tendency to help overcomes the inbred negativism and skepticism our legal training instills.

The close to the business model sometimes faces criticism for increasing the risk that corporate counsel will go native and thus lose independent legal judgment and perspective. This risk is always present for corporate counsel and even outside counsel eager to increase their business, and FMC guards against it in three main ways. First, and

most important, FMC recruits and retains strong individuals with integrity. Second, FMC confirms the independence of these individuals by having them report through the legal team to the general counsel at the corporate level, as opposed to a hard line to the business manager. Third, lawyers close to the business develop relationships with business managers so that the business managers develop confidence in the judgment of their lawyers, trusting from experience that the lawyers are skilled and not too conservative. The result is that lawyers over time have less pressure on them to go native because managers respect their judgment.

The close to the business model also minimizes the twin opposite risks to the compliance of corporate operations: (1) that the lawyers' lack of involvement in the business prevents them from knowing what actually is happening or where the risks lie; and (2) that business managers ignore the lawyer's advice because the business managers have little experience with and lack confidence in the lawyer's judgment. Ultimately, lawyers can best influence their businesses with their professional judgment by getting closely involved.

Lawyer Autonomy and Initiative

The organizational changes that FMC's legal team made to get closer to the business had the additional benefit of increasing opportunities for lawyers to exercise independent judgment and autonomy in working with particular business teams. Especially in a downsizing environment, the legal department must supplant the lack of upward career development with more rewarding work, and one way to do so is to make the lawyers more connected with the businesses they serve and to involve the lawyers more directly in helping those businesses grow and prosper. Seeing the fruits of one's labors helps to create an esprit de corps and a sense of fun, which, in turn, helps legal team members work harder even as they have more job satisfaction.


Collegiality through Teaming

Similarly, this business focus does not detract from and indeed may add to the emphasis on collegiality and connectedness among the members of FMC's internal legal community. Rather than creating independent islands of counsel generalists, the internal FMC lawyers must constantly group and regroup into flexible work teams to bring the appropriate legal assets to bear on evolving legal

issues. This fluidity helps leverage the internal expertise of FMC's in-house talent pool as we evolve from a group of individual legal specialists working across the corporation in silos lacking business unit accountability into a group of legal generalists with individual specialties that are accountable to their business units for both the cost and the effectiveness of the legal service delivery systems they manage. Because we are accountable and resource constrained, we must bring the appropriate internal and external legal assets to bear on the situation. This necessity by definition encourages the internal lawyer to find and use the best and the brightest.

CONCLUSION

In-house legal departments exist to serve the corporate interest, to protect the corporate assets, and to promote the underlying legitimate business objectives. When those departments become distant and disconnected or focused on their own



IF MANAGERS OF BUSINESS UNITS BELIEVE THEY ARE RECEIVING VALUE FOR THE COST OF LEGAL SERVICES, THAT OPINION FILTERS UP THROUGH THE BUSINESS MANAGEMENT OF THE CORPORATION, AND THE CEO DOES NOT WONDER WHY LEGAL COSTS ARE \$X MILLION.

structures or preservation, they become targets for derision and ultimately for destruction. By becoming an integral part of the businesses they serve, by understanding, recognizing, and helping to develop the business unit's specific goals, internal lawyers can and will find the progressive solutions to the specific business challenges.

Although particular solutions or innovations can be important, it ultimately is the process of business-driven innovation that enables a corporate legal team to generate continual improvements over time. Being close to the

business strengthens this process in two main ways. First, all legal team initiatives share the unifying themes of increasing lawyers' integration with the business and driving business value as viewed by the business. Second, the close-to-the-business philosophy promotes the paradoxical objectives of both coalescing everyone in the law department around a single, clear vision and, at the same time, giving individuals autonomy to act on their own initiative to further this common vision.

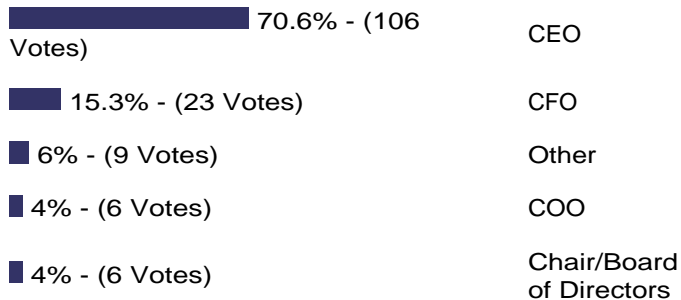
This process never ends in a comfortable steady state. Rather, the need for continual year-over-year improvement created by internal benchmarking over time and regular external comparisons institutionalizes "powerful mechanisms to create discomfort—to obliterate complacency—and thereby stimulate change and improvement before the external world demands it."⁵ For the right kind of lawyer, however, this continual challenge creates a more fun and rewarding way to practice our profession. ■

NOTES

1. James C. Collins and Jerry I. Portas, *Built to Last* (1997 New York).
2. FMC's businesses are organized into several broad and diverse operational groups: industrial chemicals, such as hydrogen peroxide and soda ash; agricultural chemicals, such as pesticides; specialty chemicals, such as pharmaceutical and food ingredients and lithium; food processing machinery, such as freezers, cookers, and citrus equipment; energy systems, such as surface and subsea completion, flow control, measurement, and custody transfer; and material handling and transportation systems, such as airline equipment and material handling equipment.
3. *Built to Last*, at 141.
4. Paradoxically, early settlement programs work well only when opposing counsel understand that the company is able and willing to litigate all the way through trial and not just to the courthouse steps. Otherwise, opposing counsel will hold out for settlements that are not attractive to the company.
5. *Built to Last*, at 187.

Who does your General Counsel report to?

A total of 150 persons participated in the poll.

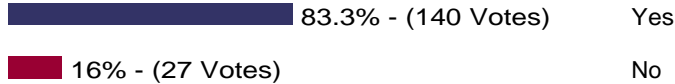


The result of this poll is not guaranteed to represent the views of the ACCA member body as participation in the poll is voluntary.

ACCA | GCCA **POLL**

Have you retained new outside counsel in the past year?

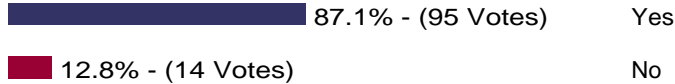
A total of 167 persons participated in the poll.



The result of this poll is not guaranteed to represent the views of the ACCA member body as participation in the poll is voluntary.

Do you advise clients in multiple jurisdictions?

A total of 109 persons participated in the poll.



The result of this poll is not guaranteed to represent the views of the ACCA member body as participation in the poll is voluntary.

ACCA | GCCA POLL

Does the legal department take part in the strategic planning of the company's business?

A total of 433 persons participated in the poll.

Yes  74 % (319 votes)

No  24 % (105 votes)

The result of this poll is not guaranteed to represent the views of the ACCA member body as participation in the poll is voluntary.

Suggested Reading:

1. Barron's Finance and Investment Handbook. John Downes and Jordan Elliott Goodman
2. Barron's Dictionary of International Business Terms
3. Kiss, Bow or Shake Hands: How to Do Business in Sixty Countries, Terri Morrison, Wayne A. Conaway, George A. Borden, Ph.D.
4. Managing Cultural Differences; Leadership Strategies for a New Business World, Philip R. Harris and Robert T. Moran
5. The Mind of the CEO: Jeffrey E. Garten