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- **CLO-hosted Roundtables**

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ACC provides its CLOs and its members with the unique opportunity to speak on behalf of the in-house bar—to **shape policy that affects the in-house practice of law**. ACC is the only organization focused on shaping the environment on issues affecting the global in-house practice of law. Our CLO members are integral to these efforts.

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ACC offers CLOs and their teams **thousands of practical resources, including quick overviews, templates, in-depth whitepapers, benchmarking data and surveys** tailored to your needs and interests. Explore a wide range of topics from law department management, the roles of legal departments, outside counsel management to substantive legal issues such as data privacy, cybersecurity, M&A, contracts, information governance, compliance, and anti-corruption.

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As an ACC member, you are **automatically** recognized as a member of your local ACC chapter and eligible to attend CLO events and services providing local networking with your CLO peers.

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ACC routinely takes the pulse of chief legal officers (CLOs) and general counsel (GC) around the world, compiling key findings and full reports on industry trends and topics that matter most: inside and outside spending, staffing, managing the law department, working with the C-suite, value-based fee structures and more.

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Corporate Pro Bono is a partnership project of the Pro Bono Institute and ACC designed to substantially increase pro bono work of in-house legal departments. Determine the needs and interests of your legal department and community and Corporate Pro Bono will assist you with tailoring a pro bono program that is right for your company.

CLO Services Direct Connect

We value our CLO members and their time. The CLO Services staff stands ready to assist you with any request.

Justin Connor, *Director of CLO & Stakeholder Engagement*

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CLO Club Insight #1 – Your New Role as a New Chief Legal Officer

Establish Your 90-Day Plan

- Understand corporate strategy, branding and culture
- Establish relationship with CEO and Board of Directors
- Schedule meetings with in-house teams and business clients
- Review law department for alignment with company strategy
- Review law department processes and technologies
- Consider law department team compositions
- Assess law department spending
- Review reporting systems
- Schedule meetings with external advisors
- What are the upcoming mission critical matters (important trials, regulatory hearings, contract negotiations, etc.)
- Learn who is the “go-to” outside counsel and why

Written Resources

- Book: *The First 90 Days: Critical Success Strategies for New Leaders at All Levels* by Michael Watkins - <https://www.amazon.com/The-First-90-Days-Strategies/dp/1591391105>
- Proving your worth in the first 100 days
- I just became a general counsel, what do I do next?
- Keynote address on independence of the general counsel

Coaching/Mentoring Connection

- Connect with a CLO coach/mentor during your first year as general counsel through ACC CLO Services. Please contact Justin Connor, Director of Chief Legal Officer Services at j.connor@acc.com or 202.677.4762 to discuss your mentoring needs.

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Proving your worth in the first 100 days of a new role

Three essential steps for creating a 100-day plan that will help you achieve success in your new job – Online at:
(<http://www.insidecounsel.com/2015/04/14/proving-your-worth-in-the-first-100-days-of-a-new>)

BY MONICA ZENT
APRIL 14, 2015

Congratulations! You've landed the new general counsel role you've always dreamt of, or you have finally received the promotion you worked so hard for... now what? The real work begins! The clock is ticking and the window of opportunity to make a positive impression is at hand.

Research and public opinion both suggest people have about 100 days in their new role to prove themselves. It's a critical period and often sets the stage for how leaders will fare in the long run. According to a survey of human resource executives about job transitions that was highlighted in the [Harvard Business Review](#), 70 percent agreed with the statement, "Success or failure during the transition period is a strong predictor of overall success or failure in the job."

We tend to judge people, from Presidents to rookie athletes to new hires, before they've even had a chance to settle in, but there's something to be said for passing this test. After all, [40 percent](#) of newly hired executives are out the door within 18 months. Transitioning into a new role is stressful and challenging. The good news is that there are things you can do to increase your likelihood of success. Here are three essential steps for creating a 100-day plan that will help you achieve success in your new job:

1. Understand the power dynamics

Every organization is different, with layers and layers of power dynamics at play. One of the first things you need to do is begin to understand these dynamics. Where does the center of power exist? Where does the legal department and, in particular, you as general counsel, sit in relation to other executives and departments? What's the perception of the company's legal department and prior general counsel?

You need to glean this information sooner rather than later. As [Jeffrey Pfeffer](#), professor of organizational behavior at the Graduate School of Business at Stanford University, puts it, “Part of your job is to know how to prevail in the political battles you will face. You will triumph if you understand the principles of power—and if you are willing to use them.”

Start simply by observing. Then, read everything you can about the company. Finally, talk with people. Set up meetings with different groups or take people out to lunch. See how colleagues respond to you. Find out what strengths or baggage you're inheriting in your role from its prior occupants. If you're walking into a healthy environment and inside counsel has earned a solid power position, map out how to maintain it. If power is askew, or the perception of the legal department among company leaders at large is toxic, think about how you can gain fresh authority and help shift the balance of power.

Keep in mind: Power dynamics vary by industry, company and even department. At some organizations, engineers hold the power, at others it's the sales team. Understanding the pecking order and where legal fits in will help you earn the respect you deserve and perform your duties more effectively.

2. Establish and nurture powerful alliances

Based on what you've learned so far, determine where to build relationships. Start where healthy relationships exist, where there's already mutual respect. Wherever you begin, though, be sure to forge allies quickly, because you can't go it alone and succeed in your new role without them.

Reach out to key departments such as human resources, technology and marketing. Start with casual conversations to break the ice and then ask how you can help them, how you can work together. Solicit their opinion. Get their buy-in. Convey the importance of working together for the betterment of the company—to be proactive and avoid things like class action lawsuits and bad press. Once you build some credibility with more receptive leaders, begin to pursue relationships with everyone else. This may be more challenging or involve a certain degree of initial backlash, but you'll have already built up strong support from others. It's important to foster connections with people so that you aren't railroaded when you encounter obstacles. If relationships were unhealthy in the past, this is your chance to wipe the slate clean.

3. Identify your agenda and secure buy-in

It's hard to tell what you're walking into as the new general counsel or the latest member of the legal team. You need to quickly assess the landscape and develop a plan of action. First, assess the legal department. Who is on your team? Where does your team fall within the organization? How do you need to reorganize? What training needs to take place? Bottom line: Get to know your team, and you'll have a better sense of the necessary changes that need to be made.

Second, identify your key initiatives for the next year and the three to five that follow. Are you representing a technology company

with no IT strategy in place, a growing company preparing for an IPO, or a health organization facing urgent regulatory issues? Whatever the case, you need to develop tactical strategies in order to take action.

Next, focus on process and efficiency. What in your company or department needs streamlining? For example, as general counsel, do you contract outside counsel? If so, what does the process look like and can it be improved? If you are an employment lawyer, can you consolidate the immigration process? Take a look at key inefficiencies and address them right away.

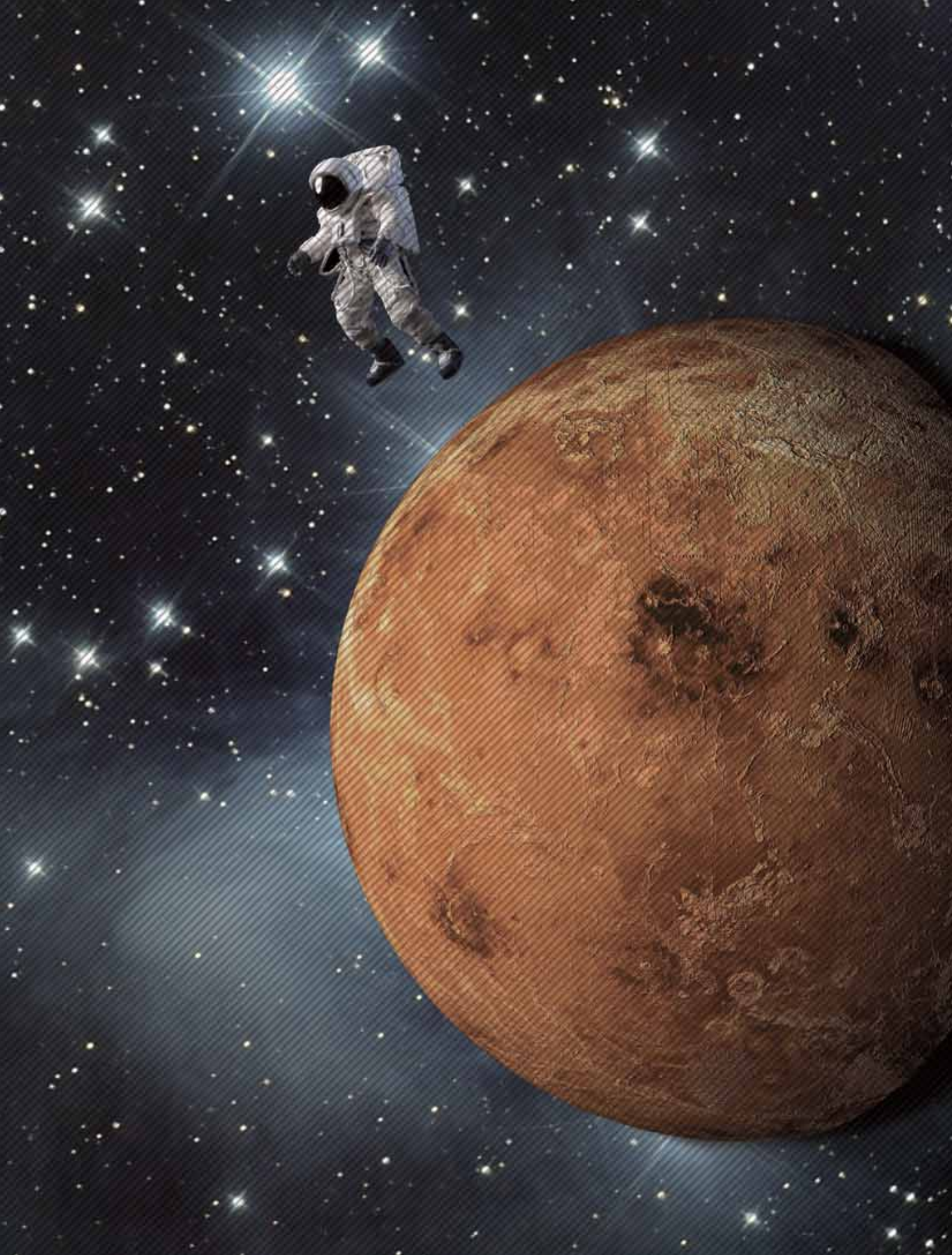
Finally, what are your expectations for your team? For general counsel, what culture do you want to create for your department and how do you want your department to fit into the larger company? For staff counsel, what reputation do you want to build within the legal department at large? Address these questions, share your vision, walk the talk, and your team will be poised for success.

The reality. One hundred days isn't a long time, but with the right mindset and a plan, it's enough to set the stage for success. It's a hot legal market right now and opportunity abounds. Make a good first impression, study the power dynamics, build and nurture alliances, put strategies in play, and hit the ground running. Good luck!

About the Author

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Monica Zent is an experienced entrepreneur, investor, businesswoman and attorney. She is the Founder & CEO of Foxwordy as well as Founder of ZentLaw, a nationally-recognized alternative law firm serving some of the world's most well-known brands. Launched in 2014 in Silicon Valley, Foxwordy is the first private social network for lawyers where they can collaborate with their colleagues, cultivate new relationships and enhance their professional reputations.





I Just Became a General Counsel:

What Do I Do Next?



BY MARK ROELLIG



Congratulations

The announcement has been made: You are the company's new general counsel. Step one — go home, open the champagne and celebrate. But, the next morning, you wake up a little groggy and wonder, what do I do next?

Over the years, I have been fortunate enough to have several lawyers who have worked with me assume general counsel positions at other companies. Having gone through the transition to becoming a new general counsel four times, I have been asked by these individuals and have received calls from other colleagues for my advice on what they should do as they start their first job as general counsel.

In addition, I have “watched from afar” circumstances where individuals have worked so hard and sacrificed so much for the opportunity to become general counsel, and then have it all crumble before them. While some new general counsel are readily accepted, earn the respect of the organization and place themselves on a trajectory of adding significant value to the business, other new general counsel can inadvertently take actions from which they never recover, resulting in a miserable experience of failed professional relationships, being avoided, and unable to garner trust or access to key information. These unfortunates have begun a slow but inevitable spiral to separation.

The purpose of this article is to provide my thoughts on how you should focus your time during the first 90 days “in office,” to best position yourself for success in the months and years ahead. Generally, within this short period of time, you are either heading toward a great career or the beginning of the end. Take this period seriously. My suggestions have worked for me over the years, but every department size, situation and culture is different. Some may work for you, while others may not. Timelines may be different, and customized approaches for your particular situation should allow you to achieve even better results. Regardless, the next 90 days are probably the most important of your career to date.

One more general comment: While these lessons have been gleaned largely as general counsel, they can be applied beyond that role to other leadership positions in an in-house law organization. In fact, they apply beyond law, and I have successfully employed many of these actions in assuming other C-level leadership responsibilities in large corporations, such as the lead for human resources, corporate marketing, public relations, government relations and public policy.

Preparing for the first day

You actually should begin to gather the information you need to be successful in your new position even before you are offered the job. In preparing for the interview process, you should navigate through the company’s website, review the bios of the key executives, and read the 10K and proxy. Then, during the interview process, your lists of questions for your new boss, the CEO, the leadership team and members of the law department should include: Why are they going outside for this position? What can make the law department better? What works particularly well in the department, and what does not? What would they like to see changed in the legal organization? And what keeps them awake at night? You will also want to ask the CEO and CFO at some point during your dialogue if there are any significant legal issues that require immediate attention.¹ Make sure you carefully document these conversations. Not that you should take notes during the interview, but you do want to be able to remember what you have heard after the meetings. In particular, listen carefully to what the CEO tells you — these points will likely be the focus of your immediate attention.



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Have the company gather information

Now that you have landed the job, finished the champagne, woken up and become human again, what do you do next? Your most important priority should probably be to learn more about the company. You should go over the material you studied and obtained during your interview process and begin to dive deeper, with help from the company. Make sure you review any analysts’ presentations listed on the company’s investor relations webpage. Read the bylaws, the corporate governance guidelines, committee charters

and other relevant information on the governance page. In addition, ask the investor relations team to provide you with any analyst reports on the company, its key competitors or the industry in general. This is an effective way to quickly get up to speed on the key issues facing the company and the industry. If you haven’t already done so, go back to recent analyst or earnings calls and listen to the recordings. This will also help you become aware of what the CEO, CFO and the analyst are focusing on for the company, and because you invariably will be asked in the future to review your CEO’s or CFO’s prepared remarks for Wall Street or other investors, you must be ready.

You must learn and understand the company’s strategy. Ask for background information that can assist you in learning this. It may be in material presented in a board strategy session; it could be in material the investor relations team has generated; or there may be a strategy lead or organization that can provide you this information.

If the company is willing to share them with you before you start, you should read the past year of board and committee minutes. You should also review all the presentations to the board and the committees over the last year. If you can’t get them in advance, you will want them on your desk the day you arrive.²

Learn about the law department

You will want to start more in-depth learning about the results, structure, skills and quality of the law department. Ask the human resources contact to provide you with bios or resumes of all the lawyers in the organization. You also need the organizational charts for the company and the legal function, the performance appraisals and succession material for the attorneys in the department, and the law department compensation information. Finally, ask for a copy of any presentations relating to the law department made to the board or senior management, and your depart-

ment's budget and actual spend, not only for the current year, but the past two years as well. Focusing on the areas and geographical location of spend and the use of outside counsel will help you understand the areas of significant legal activities and may give you insight into what areas are being managed well.⁵

Help from your assistant

You may have an assistant assigned to you prior to your first day. If not, you should ask your contact in the human resources department to provide someone who can assist you in preparing for your first day. You should contact this person, introduce yourself and make sure that you have all the items you will need in your office on day one — computer, office phone, cell phone, etc.

Often, your assistant will be the assistant of the departing general counsel — on balance, this usually is a good thing, although, depending upon the circumstances, you may have to evaluate the challenges of divided loyalties. Your predecessor's assistant will know the company and department well and can help guide you through the “unwritten rules,” such as parking, expense reports and the dress code. He will probably know the assistants of all the top executives and will have real insight on how

to work with the CEO, the other leaders, the board and your team. Assuming you plan for at least some period of time to work with your predecessor's assistant, you will want to gain that person's trust and respect. This starts during your introductory call, before your first day, during which you are “chatty,” friendly, and talk about yourself and how you work best. If possible, you want to calm your assistant's fears, indicate that you do not plan to bring on a new assistant, and that you sincerely need and appreciate the help. At Fisher Scientific, my office was right across from the CEO's, and we both generally kept our doors open. I was “coached” by my assistant, the assistant of the prior general counsel, to never just enter the CEO's office or knock on the open door. The appropriate practice was to “hover” in front of the open door and be asked to enter. If I had never known this, I would have probably irritated my new boss and gotten off on the wrong foot within the first week.

Also, request that your assistant flag and advise you immediately of any concerns or questions they see with your compliance related to any policies of which you may not be aware (memorialize this request in a memorandum — you simply cannot afford to get “hung up” in this area). My experience is that you are generally better off to assume the

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incumbent assistant than to take the risk of the two of you learning together — or to bring along your current assistant, which is a huge mistake.

The assistant should provide you with materials on the department (there may have been a strategy offsite or objectives drafted for the department), which can be helpful for you to read in advance of your first day.⁴ This person should arrange all your meetings for the first two weeks. You will want to meet with the entire legal organization on your first day. An in-person, “town hall” format usually is preferable and needs to be scheduled, but may not be practical for everyone in the department. Those who cannot attend in person can be included by phone or videoconference. Finally, your assistant can help schedule your initial meetings with your CEO, any “board counsel,” your direct reports, key business C-level clients and your budget coordinator. You will also want assistance in including events, such as all board meetings, leadership team meetings, analyst call dates, etc., on your schedule.

The critical first day: You only have one chance to make a first impression

Meet with the CEO

On the first day, you will want to meet with your boss, the CEO, for an hour, if possible. After the normal pleasantries, the focus should be on her expectations of you and the legal organization. You need to ensure clarity on both short- and long-term expectations. You will want to ask about key objectives, metrics and any important projects or short-term issues on which you need to quickly get up to speed. You should discuss the law department, asking about strengths, weaknesses and areas where you should focus. You should ask about her views of any individuals she has worked with in the department — in particular, you must find out quickly and tactfully who, if anyone, is immune from any restructuring decisions you may make. You should ask about her communication-style preference (i.e., email, voice mail, memos, meetings, etc.). You should discuss her expectations of you with respect to the board, and obtain an overview of her impression of the board members and their areas of interest or concern.

Toward the end of the meeting, you should indicate what your plans are for the day and the next several weeks: Show you have a plan and know what you are doing — because you do. This leaves you with the ability to sum things up with the questions “What, in your view, are my most important areas of focus?” and “What would success look like to you, for me, in the next 90 days?” As you close this meeting, schedule your next meeting or conversation, and ask whether weekly or monthly one-on-one meetings

would be valuable for the two of you, as you commence your work.⁵

I had been working with the CEO of Fisher for about three months when he told me that he would appreciate that I meet with him simply to tell him of the projects I was working on, even though they did not need his input, decision or involvement. I kicked myself for not having asked him earlier how he wanted me to communicate and meet with him. It would have been so easy to do.

Your first team meeting

On the first day, you will want to have your initial meeting with your new organization — the entire legal organization (lawyers, paralegals, assistants and others).⁶ The purpose of this meeting is to inform the team you are pleased to join them (if true, you want to let them know you have heard many positive things about the team during your interviews with the CEO and other leaders of the company); introduce yourself; provide them with your background, experiences and areas of legal expertise; outline the key attributes you value; indicate what your areas of focus will be for the next two months; and reveal how folks can best interact with you.

As mentioned previously, I see value in getting the entire team together for this meeting. It helps set the appropriate mindset: We are all one team. However, if there are many different locations, the team is small or you feel the culture of the company is not consistent with such a meeting, smaller group meetings may allow for a better creation of a team feeling and allow for more interaction. The important thing is that you communicate early and in person, if possible. I heard from one high-performing attorney at a major corporation that had just hired a new general counsel how disappointed she was that she had not met the new general counsel. You do not want the high-performers disappointed — you want them energized.

After you have covered your introduction, background and experience, the attributes you value and expect are the most critical part of this meeting. In discussing attributes, the focus should be on what type of department you intend to build. For me, important values are a team that is performance-driven, results-oriented, partners with the business, strategic, proactive, creative, hardworking, responsive to clients and diverse. Your priorities may very well be different. Make it clear that you expect the team to always comply with the law and regulations, act ethically, and value fellow employees. For example, with respect to illegal or unethical actions, harassment, or inappropriate behavior in the workplace, I do not tolerate it or allow “three strikes.” I advise them that the entire team is getting their first two strikes now. In addition, you want to make clear that you value inclusion and diversity, in all respects,

You do not want the high-performers disappointed — you want them energized.

and you want to create an environment where creativity and ideas can be generated from anyone, anytime. As my CEO at StorageTek used to say, “When smart people ask stupid questions — listen.” The best ideas will come from those closest to the issues, and not from you. You will need the help of all of the team — when functioning well, they should be telling you what to do.

In this meeting, I also cover my view of use and protection of the company’s assets: We treat them more dearly than our own. Giving some examples of areas of spending that in the past you found odd or inappropriate will alert them to your “cost-conscious” focus. You also will want to indicate your plans, with whom you will be meeting and what the department can do to help you. Be frank about your leadership style and how the team can best interact with you. I am very up front that I am an introvert and that people should understand it is a challenge for me to affirmatively go out and engage or to be “warm and fuzzy,” but they should not misread that. Finally, I tell them a little about myself, my family, how I spend my free time and what I like to do. This helps open you up to the organization and allows a basis for interaction with those who are not as focused on just the work. Ask for questions. There are unlikely to be any, and that is fine for a meeting like this — it is more of a soliloquy than a “meeting.”

The very busy first two weeks

During your first two weeks on the job, you want to meet with many people inside and outside the company. Advance scheduling of these meetings is critical. The overall objective will be to learn as much as you can as you also begin to develop relationships and trust, and determine who your future allies may be. As with all meetings, be very cautious about what you say, and what you write or email. You have no clue in whom you can confide. Rest assured, there is someone out there who, for whatever reason, is not happy with your arrival and will not want you to succeed. To do what I thought would assist my new team, at US WEST, I sent an email to all the attorneys I was now leading to advise them that the new general counsel would be visiting us the next day, and it might not be a good day to “sleep in.” Much to my chagrin, it was forwarded anony-

mously to the CEO with a disparaging comment about the type of culture I was creating.

Meet board counsel

If the board or the company has an outside attorney with whom they have worked closely, you will want to meet that person within the first two weeks. You must make this board counsel your friend as soon as possible. For this reason, this meeting may be best conducted over a dinner and not in a group setting. This counsel can either tremendously assist you in the successful transition with the CEO and the board, or sink you fast if you get off on the wrong foot. In all likelihood, they will have significantly more cachet with the CEO and the board than you will, for at least six months to a year. The good news is that this counsel has every incentive to make you like him and to help you (unless they were a candidate for your job — you need to know that, and if so, be very careful). So you probably have one friend and semi-confidant from day one. Ask all your questions about the CEO, the board, the leadership team, the company and your organization. Assume everything you ask will go back to that group.

Meet leaders in your department

You will need to meet with your new direct reports. Schedule, generally in your office, three-hour meetings for each — although the meetings will probably take between two and three hours. Prior to each meeting, you should review their resume and bio. The purpose of these meetings is to ask each person seven questions.

The first question, which will probably take at least half the time is: What are you working on? That person should describe for you the major projects in which he is engaged. This allows you to learn and quickly get up to speed on the major legal issues in the department and the company. Some individuals may not have significant or large matters they are working on — with these, ask them to “bucketize” their time. What type of issues — in percentages — do they spend their time on during any given week? (Usually, you will set up follow-up meetings with these attorneys or outside counsel on important issues discussed in this segment.)

The second question is: What are your objectives? Make sure you ask this after the first question — you will often be surprised at how unrelated an individual’s objectives are to what they are working on day-in and day-out.

The third and fourth questions are about the people: Who are the “stars” a layer or two down in the organization? You need to identify these folks quickly. Usually, you will hear the same name(s) from multiple people, and that will give you more confidence that the person is indeed a star. The fourth question gets a little more challenging.

You do not want the team to think you are asking them to disparage others, but you need to find out if there are any “people issues” in the department — maybe someone who does not display appropriate behavior, is impossible to work with, withholds information, etc. Do your best on this one, but you are really trying to ensure that you don’t get surprised early in your tenure with an employment issue within your new department. You must assume that the fact that you are asking this question will quickly leak to your next meetings, but you still need to ask it. At one company, as the general counsel was going through meetings similar to these, he kept hearing that although one attorney was an extremely good attorney and her clients loved her, the attorney was rough on her team. The general counsel also found out there had been repeated investigations and “findings” relating to these issues. Within the first month, the general counsel, not the lawyer’s supervisor, terminated this employee. This action could not have made clearer who was in charge, and what would not be accepted, even if that individual were an excellent attorney.

The fifth question is one to which you must very carefully listen to the answers: What can we do better? The answers will not only provide you with ideas to help you and the department, but will also indicate whether the person has ideas or can think about, accept and drive change. This will often be a tough question for your new direct reports, because if something should have been changed, then you need to know why it hasn’t happened yet. Also, the answers will help you learn who can drive change, what may not be going so well in the department, and what issues your predecessor ignored or could not solve.

Close the meeting with the sixth and seventh questions: What advice do you have for me, and what can I do to help you?⁷

Try to avoid, during the first two weeks or the first 60 days, having any “personal” interaction with your direct reports or members of your department. Business lunches are fine, but getting together with spouses or families can make later decisions even more difficult or clouded by the significant impact such decisions may have on these non-employees. Try to avoid the requests to get together with you and your family to show you the new location, introduce you to friends and have spouses assist in activities like “house hunting.” You really want to make any restructuring decisions with only business factors in mind.

Meet other executives

You will also want to begin meeting with your key C-level executives. The goal of these meetings is not just to learn, but also to take the first step in building “relationships” that will be critical for your success. Meet for about an hour in their offices — not your own. You will see cues

in their offices that will allow you to “connect” and interact better (sailing, skiing, pet or family pictures and knick-knacks). Here, you can socialize and accept the “house hunting” assistance. These relationships will likely be the most critical ones to your long-term success in the new organization. They can help you navigate through the new culture and explain to you how to interact with your new boss. Generally, they will want you to be successful, and you want to stress with them you are there to help them to advance the business and legally meet their objectives. Those who interviewed you probably supported your selection, so they have already “bought in” to believing you will be good. Since they want confirmation of their excellent selection decision, they will likely help you.

You need to know about their objectives and challenges, what the legal organization can do to help them and how you personally can best partner with them. The focus should also be on what the legal organization does well and what it can do better, and on a discussion on their views of individuals on your new team. In addition, these individuals can help inform you about the culture of the company, indicate how effectively the leadership team works together, advise you how the company executives communicate with the CEO and each other, and how problems are analyzed and decisions are made. Make it clear you want and appreciate their help — people like being asked to help.⁸ Schedule times to continue your interactions with these executives. Beginning from your initial interactions, and over time, you want to understand, in addition to their business objectives, your peers’ values, goals and interests. Knowing these three areas will allow you to communicate and interact with them better. Rest assured, the CEO will ask these individuals how you are doing.

Meet the stars — they will give you the best ideas

You will next want to meet with any other key members of the law department and the stars — the strong performing individuals whom your direct reports and others have identified. You need to meet with these stars very quickly, as they will be the ones who will generally benefit the most by any change. They will want to meet you, will be honest and will have the most ideas for improvements. These are individuals who it may be best to meet with in a social setting, but take a pad of paper — their ideas will fill it. These stars are also likely candidates for your new leadership team — if you choose them, they will be incredibly loyal to you for catapulting them out of oblivion, and they will be respected by others because they were viewed as stars.

Other meetings and actions

Meet early with those individuals who were in the law department at one point, but transitioned to another

Checklists

Preparation prior to job offer

Information from public documents

- Navigate through the company's website.
- Review the bios of key executives.
- Read key SEC filings — the 10K and proxy.

Information from interviews

- Why are you going outside for this position?
- What can make the law department better?
- What works particularly well in the law department, and what does not?
- What would they like to see changed in the law department?
- Are there any significant legal/regulatory/governance issues that require immediate attention?
- What keeps you awake at night?

Preparation after job offer

- Review analysts' presentations listed on the company's investor relations webpage.
- Read the bylaws, the corporate governance guidelines, committee charters and other relevant information on the governance page.
- Obtain analyst reports on the industry in general, the company and key competitors.
- Listen to analyst and earnings calls.
- Review strategy material.
- Read board and committee minutes from the past year.
- Review presentations to the board and the committees over the past year.
- Obtain bios/resumes of all the lawyers in the law department.
- Obtain organizational charts for the company and law department.
- Obtain law department compensation information.

- Obtain the performance appraisals and succession material for law department.
- Obtain presentations relating to the law department made to the board or senior management.
- Obtain the law department's budget and actual spend, for the current and past two years.

Action items for your assistant

Obtain the information you need for "preparation after job offer."

Items for day one

- Computer
- Phone
- Cell phone
- Key company policies

Events to schedule

- One-hour in-person Town Hall — provide for phone or videoconference for nonattendees
- One-hour initial meeting with your CEO
- Meeting/dinner with board counsel (this can occur before you formally start)
- Three-hour meetings with each of your direct reports
- One-hour meetings with key business C-level peers/clients
- One-hour meeting with your budget coordinator

To put on calendar

- Board and committee meetings
- Leadership team meetings
- Analyst call dates
- Annual meeting date
- Other key dates or items

Agenda for meeting with the CEO

- Clarity on both short- and long-term expectations
- Objectives, metrics and any important projects or short-term issues to quickly get up to speed

- Strengths/weaknesses of law department
- Areas where you should focus in law department
- Views of individuals in the law department (try to find out if anyone is "immune")
- What are the most important roles in the law department?
- Communication style and preference (email, voice mail, memos, meetings, etc.)
- Expectations with respect to the board
- Impression of the board members and their areas of interest or concern
- How does the company communicate with the board?
- What are my most important areas of focus?
- Your plans for the day and the next several weeks
- Would weekly or monthly one-on-one meetings be valuable?
- What would success for me look like in 90 days?
- Schedule next meeting or conversation.

Agenda for first team meeting

Indicate you are pleased to join the team

- If true, advise the team you heard many very positive things about them as you interviewed with the CEO and leadership team.

Introduce yourself

- Background
- Experiences
- Expertise

The attributes you value

- Performance-driven
- Results-oriented
- Partners with the business
- Strategic
- Proactive
- Creative

- Hardworking
- Responsive to clients
- Inclusive
- Diverse

Expectations

- Always comply with the law/regulations
- Act ethically
- Value for fellow employees
- Value inclusion and diversity — in all respects
- How we treat the company's assets

Other items

- Areas of focus for the next two months
- How best to interact with you
- The personal you

Questions for meetings

Direct reports

- What are you working on, or how do you “bucketize” time?
- What are your objectives?
- Who are the “stars” in the organization?
- Are there any “people issues” in the law department?
- What can we do better?
- What advice do you have for me?
- What can I do to help you?

Other executives

- What are your objectives and challenges?
- What can the law department do to help you?
- How can we best partner together?
- What does the law department do well?
- What can the law department do better?
- What are the most important roles in the law department?
- What are your views of individuals in the law department?
- What is and what do I need to know about the culture of the company?

- How do the company executives communicate with the CEO?
- How do the company executives communicate with each other?
- How effective is the leadership team at working together?
- How are the company's problems analyzed and decisions made?
- Are there any “unwritten rules” or practices I should be aware of?
- You want and appreciate their help.

Additional information you need and actions to take

Meetings

- Meet the stars.
- Meet others who were in the law department.
- Meet other important individuals identified in initial direct-report and peer meetings.
- Meet with the outside counsel working on your key legal matters.
- Meet with your predecessor.

Other information

- Were there internal candidates for the general counsel position? Why were they not chosen?
- Benchmark information on how other in entities in your industry, of similar size and presence, structure their law departments and their internal and external costs.
- Meet with general counsel of key board members.
- Eliminate any obvious wasteful spending.
- Create “trial balloons” on structure and potential leaders.
- Reach out for feedback.
- Schedule time to wander around the office.

Actions for new legal leadership team

- Agree and be aligned on values that drive employment, performance and compensation decisions.
- Agree on how will you work to develop a law department strategy with specific objectives.
- Agree on when and why you get together.
- Launch a series of task forces.
- Create a plan to evaluate and make decisions about additional structure and staffing.
- Have ongoing communications with the entire team.

Agendas for ongoing meetings with the CEO and business leaders

- Outline your agenda and your priorities.
- Summarize actions taken and results achieved.
- Ask for their priorities.
- Find out if your priorities are aligned with theirs.
- Seek feedback on your and your team's performance.
- Ask for assistance in recognizing and rewarding the performance of high achievers in your organization.

If you find any area of cost or spend that you think makes absolutely no sense, and are informed as you go through your meetings that this is a consistent view, stop it in the first 60 days.

leadership position in the company. These folks will know the players, will be happy to provide their insights and can provide extremely beneficial non-biased information.

You need to meet with your budget coordinator to fully understand your department's budget and areas of spend (internal and external), year-to-date spend and forecasted full-year spend. Compare this to past years' results and benchmark data. This can provide you with a high-level of insight into areas that may or may not be led well.

If you find any area of cost or spend that you think makes absolutely no sense, and are informed as you go through your meetings that this is a consistent view, stop it in the first 60 days. This will make it clear that the culture will not be one of waste, and you will immediately make changes to eliminate it. At MassMutual, I closed a "library" rather early, and we all moved to online research. And for me, having assistants transcribe dictation is "verboden" — I stop it immediately. This reduces costs, increases efficiency and the assistants will love you.

Finally, schedule time to just walk around and meet with members of your team unannounced. For those who are introverts, this will not come naturally; for others, it will. This provides some insight into the work ethic and culture of the team, what work is going on in the office, who is and is not doing the work, and helps improve morale when folks realize that the boss is interested in them and their work.

Other information you need

There are two other areas of information you want to gather through your series of meetings. First, you want to know what your organization and the company view as the most important roles in your department. This information will be important as you decide where you want to allocate your organization's best talent. It may be solicited from the CEO, members of the legal team or your new peers.

Second, you need to know whether there were internal candidates for the general counsel position and why they were not chosen. You need to find out if someone is "fester-ing," or hoping you fail, and what the company was looking for in the general counsel position that they felt was lacking in the previous team. This information may come from the CEO, the human resources organization, a search firm that placed you, members of the legal team or your new peers. Keep in mind, some of your new peers may have supported an internal candidate, so you need to be careful how you solicit this information from them — it may be better to phrase your questions as such: Why did the company feel it was necessary to go outside for this position, as compared to focusing on particular members of your new team?⁹

At one company I joined as general counsel, I was able to ascertain rather quickly that one of my new subordi-nates was the CEO's preferred general counsel, but the board pushed to hire me. This information was critical for me to understand that I needed to be extremely care-ful as to how I interacted with this attorney. Over time, I garnered his respect, trust and friendship, which resulted in improving my relationship with the CEO. That gave me even more flexibility on making tough decisions, because, of course, the CEO would often ask this individual how I was doing and whether we were we doing the right things. (This may not always be the best way to interact with an internal candidate for your position; it is very dependent upon the personalities.)

The first 60 days — race to structure

After the first two weeks, you will continue to learn about the company and the business, complete the meet-ings that could not be scheduled earlier, and conduct follow-on activities and meetings based upon what you have learned and are learning. In addition, you will want to obtain external information and data to assist you in your future decisions. At the end of this data-gathering process, you will want to make any decision on changes to the orga-nization's structure and your direct report team.

Obtain external perspectives

As you learn about the industry, the company and your organization, you will want to be accumulating benchmark information on how other entities in your industry, of similar size and presence, structure their law departments and their internal and external costs. The ACC CLO Think Tanks, General Counsel Roundtable, the Conference Board and other associations can help you here. In addition, it can be very valuable to meet with the general counsel of your key board members' current or former employers. These general counsel can give you great insight into what that board member is looking for and expects from their

general counsel. Finally, there is no downside in attempting to meet the general counsel of other major corporations in the area — but that can be done over the first six months. Just call their offices, tell their assistants who you are, and set up a lunch or meeting.

You will want to meet with the outside counsel working on your key legal matters. These individuals will not only help you get up to speed on the key legal issues that the company is facing, but will also be able to explain the qualities of your attorneys with whom they interact. They will be very happy to meet with you, in particular on substantive issues. Be careful making any quick changes to the outside counsel the company has retained historically. Almost all law firms have excellent attorneys. Just because the attorneys with whom you previously worked with at firms X and Y are great, you should not assume the attorneys at firm Z, who currently work with members of your new law department, are not as good. Often, the outside counsel with whom your team is currently working know the company and its issues well, and interact well with your team's working styles. There is no reason to disrupt that relationship without careful analysis — well beyond your first 60 days.

Decide structure and staffing

With all the data you have gathered from all the sources mentioned above, you should be in a position to determine the structure and staffing of your new organization. On restructuring, keep in mind that the structure should follow the needs of the business. What is the optimal structure for provisioning legal services based upon the company strategy, and business and legal needs? It depends. That is why it is so critical that you have been learning and understand the company's strategy, business objectives and, most importantly, legal activities. You can't structure and staff effectively until you know where you are going (strategy, structure, staffing). Centralization or decentralization and different structures can all be effective based upon the business needs and culture. The input you have received from the CEO, board counsel, your peers and the stars will probably help you the most in thinking about this restructuring. Your direct reports will be personally affected and will more likely have biased views of how to organize.

While at US WEST, our strategy was to "integrate" our products and services (landline, cell, DSL, VDSL and directory), and to ensure we had consistent regulatory positions across 14 states and the federal jurisdiction. Thus, a centralized law department was necessary and best. At MassMutual, part of the company strategy is to have and incubate strategic business investments separate from the life insurance business. To advance this strategy and create

the "separate" cultures, it makes sense to have a decentralized legal team for those investments.

Only after deciding on a structure can you populate the positions. Almost always, improvements can be made in both areas. Your predecessor's decisions were not necessarily wrong — they were probably right at the time made. But the company, strategy and people have changed, and your predecessor generally has not evolved the organization to accommodate these changes, or she may have found it too difficult to execute the necessary changes. We all have our "dogs" — issues on our desks or in our departments that we avoid for months or years, and the next person addresses them in their first 60 days. You probably left a few at your old company or firm, too. Finally, there are times — rarely — where the structure and people are just what you want, and it is time to charge forward.

If the law department has more than 50 attorneys, you should be able to find all the talent you need to populate your direct report team from within the organization. There are several consequences associated with these promotions. First, remember that if you promote one person, it may result in two or three promotions if done from within. Second, it also sends the message that you value your new team. Third, if you go outside and bring in an attorney or attorneys from your past life, you will be criticized for "cronyism." Just because other attorneys were successful in a different firm or culture is not a guarantee of success in your new company. To surround yourself with folks you have worked with in the past, even if you think they are better than anyone on your team, will cause the entire organization to believe that the culture is not a performance-driven meritocracy. Even leaving a box empty or filling it with an external search usually sends a better message to your organization than hiring someone you know from your past. Plus, populating your team with individuals who bring an external perspective can be very valuable. Having said all this, other Fortune 100 general counsel have argued with me that if you need to fill a critical position, in particular during a "time of war," depending upon your incumbent talent pool, it may be best upgrade with someone you know who will provide a known expertise and loyalty. If you do this, you should proceed cautiously, understanding and addressing the risks, including that even among your new team, you will have created an immediate disparity of relationships.

Keep an eye on diversity — in all respects. Only a diverse team will give you the different perspectives you will need to be successful. It also helps establish a visible culture of opportunities based on performance, not on other factors. After six months or a year in the position, you can introduce folks you have worked with in the past, but be cautious bringing these individuals into the group

because, regardless of what you do, they will be viewed as your “friends” and hurt your objective to reward results from within.

As you continue to think about staffing, you want to proceed in careful, quiet ways to see what your peers, the stars or even your direct reports think about various legal department structures, and the ability and potential of certain individuals to assume leadership positions. Your decisions will be a clear reflection on you, and you don’t want to be surprised that somebody who is superlative in a meeting with you is viewed as a jerk by the rest of the organization.

Don’t ignore the past

A comment here on predecessors, earlier decisions, processes or plans: It may be easy or correct to be critical or say negative things about the earlier organization or how it operated, or to immediately implement a program or process that was very successful for you in the past. There is very little upside in these actions and there can be a significant downside. I heard about one new general counsel who told one of his new attorneys, who was a star, at the beginning their first phone conversation, “We’ll need to teach you how to be a business-focused lawyer.” The star immediately felt devalued and unappreciated for all of the excellent business-focused work he had done for his clients. When I was at US WEST, after hearing a new executive summarize to the board all the mistakes of his predecessor, one of the board members, who was the vice chair at Ford, commented that at Ford they called such blaming “FUFA” — “f***** up former administration.” He said he wanted to hear about future plans rather than all the FUFA.

You want the team focusing on the future and not on the past. In addition, you will often need individuals who had relationships with the past or with past decisions, to affirmatively support your changes and feel comfortable doing so. There are often very good reasons for the decisions of the past. You will do better to understand and learn from them, than to immediately reject them. Also, keep in mind that a program or process that worked for you in the past may not work well with the new company or its culture. To make a change, you will need understanding and buy-in from your team. Finally, numerous references to “the way we did it at [your old entity]” is inconsistent with the objective of building a best-in-class organization, which takes the best of all ideas and continuously improves on them. When I was a lawyer at US WEST, we had a new general counsel join us from NCR (as an aside, he taught me 95 percent of what I know about leadership). However, he referred so much to the way they did things at NCR that the running joke was we

had turned into “NCR WEST.” It was not well received by folks who rightly believed several of the ways they were doing things were already best-in-class, and should not be immediately rejected because it wasn’t the way NCR did them.

Finally, if it is appropriate, based upon the circumstance under which you assumed your position, you probably should meet with your predecessor in the first 60 days. There is no reason to take the criticism that you changed X without any input from the person who made the decision, and there will always be people who liked your predecessor. They will value the fact that you showed respect to that person. Remember, you too will be a predecessor someday.

“Socialize” and obtain support for your decisions

Within 60 days, you want to come back to the CEO with any recommendations you have for any changes in the department. In all likelihood, this will be your best opportunity for the next five years. Be bold — address problems now — and do what is right. After 60 days, you will know the names of the spouses, children and pets of your direct reports, which will make it much harder to do any restructuring. These will be the most important decisions you will likely make in the first 90 days. Trust your instincts and your impressions. One general counsel of a Fortune 100 company, who was formerly involved in a leadership position in humanitarian response, traveled to Macedonia to assess the international humanitarian community’s state of readiness for the spread of the Balkan crisis. Because of his limited time on location after being on the ground for only eight hours, he rather apologetically shared his impressions with a senior United Nations official. The general counsel found the official’s response insightful and memorable: “Your first impressions are likely to be your best impressions; after that, everyone is trying to confuse you with their perspectives and their interests.”

Make sure that the CEO understands and supports any changes you are recommending. After the CEO meeting, you should talk with your peers in key leadership positions — although you probably should have had ongoing conversations with them about thoughts for your organization and focus. You want to make sure they know what you are doing and why, but because your success will depend on your team, this is more of an “advising” conversation than a consulting one. If any of these executives are “losing their attorney,” or are going to be working with new individuals, different from those they liked and trusted in the past, you need to explain the rationale for your changes. I failed to do this on occasion, and once, it caused tension with one of our top executives. I had to scramble to develop a consulting arrangement for an attorney who was leaving the

business in order to create a softer landing. But remember, this needs to be your team, and as one general counsel I worked for aptly said, “Just ‘cause the clients like X, doesn’t mean X is a good attorney.”

Don’t forget the legal work

Of course, you must do all of the above at the same time you are engrossed in learning about the legal and business issues, handling significant legal matters, interacting with your inside and outside counsel on the topics that require your immediate attention, making legal decisions and preparing for board meetings. Don’t neglect these activities and be sure to do them exceptionally well. Be positive, engaged and energetic. No one said that this job was going to be simple, but those activities should come easier from your past experiences and abilities. Frankly, it may be advantageous if you are commuting long-distance to the job for the first several months, as it allows for 16-hour days and airplane reading. Being a general counsel, or any C-level executive, in corporate America is not easy or for the faint-of-heart.

Reach out for feedback

It is worth noting that you will probably receive little to no feedback on how you are doing during your first 60 days. You will be driving blind and quite possibly making repairs and course corrections as you rocket down the road. Your best sources for feedback will be board counsel, maybe some of your peers, and possibly the search firm that placed you. Keep in contact with the search firm. They will have sources back into the company, maybe the CEO or the human resources organization. Ask them to make contacts for you and provide you feedback on how it is going. They are your friends and will also have every incentive to ensure your success.

Days 60–90: You are only as good as your team

Communicate and establish the culture

It is time to communicate again. You need to advise the company and your department on how it will be structured going forward, and its key areas of focus to support and advance the company’s strategies. The communication to the department is best done in person in a “town hall” or similar setting, with the ability for those who cannot attend to listen in.

In this meeting, or in any announcements for that matter, you need to specifically and directly tie back to the attributes you outlined. That is, you should explain why your choice of X is consistent with an organization that will be performance-driven, results-focused, partners with the business, strategic, proactive, creative, hardworking,

ACC Extras on... I Just Became a General Counsel

ACC Docket

- Transition Lessons for Taking Your First In-house Vows (Nov. 2010). www.acc.com/docket/vows_nov10

InfoPAKSM

- Compliance Officer and General Counsel: Benefits and Pitfalls of Combining Roles (Sept. 2010). www.acc.com/infopaks/co&gc_sep10

Webcast

- Leading Today’s Dynamic Legal Department: Managing and Motivating Your Team to Build Tomorrow’s Leaders (Sept. 2011). www.acc.com/webcast/building-leaders_sep11

Surveys

- 2011 ACC CLO Survey Executive Summary (Nov. 2011). www.acc.com/survey/CLO-summary_nov11
- 2011 CLO Survey (Oct. 2011). www.acc.com/survey/CLO_oct11

ACC Online

- Community — Chief Legal Officers. www.acc.com/community/clo/index.cfm

ACC has more material on this subject on our website. Visit www.acc.com, where you can browse our resources by practice area or search by keyword.

responsive to clients, ethical and diverse team players. You can change a culture more easily and quickly than you think. Change is not about what you say or the charts you put up, but rather the actions that you and your team take that are consistent with those words and charts. The actions employees watch most are whom you hire, whom you reward, whom you promote and, yes, whom you terminate. Employees watch their leaders like hawks; if you want a hard-working and cost efficient-culture, you must be on the job, in the office, working long days and not wasting the company’s resources in visible areas — office furnishings, travel, etc.

Actions for the legal leadership team

Now it is time to pull together your new direct report team and begin the focus on the future. You are transition-

ing from your solitary “lonely” work, to building a high-performing leadership team, completing the structure and staffing for the rest of the department, and establishing the future direction for the entire legal organization.

Often, the first meeting of your new leadership team is best conducted at an offsite location where, for a full day, you will not be interrupted by the issues *du jour*. Your attention should be directed to at least the following six areas. First and foremost, you will want agreement on the attributes or values of the department. During your first day, you outlined what attributes you valued for individuals in the department. Now, you need to ensure the team is aligned on these values (they should be; you chose them) and refine them as is appropriate. Over time, the culture of a company or a division becomes the collective values of its leadership. Thus, you all must agree on, be aligned with and communicate the values that will drive your future employment, performance and compensation decisions.

Second, and very importantly, you will want agreement on how you will work to develop a law department strategy with concrete specific objectives to support and advance the business. Most likely, the other departments in the company will be metrics-driven; you will earn their respect by defining and tracking law department metrics to show the value added to the business or areas that need legal focus.

Third, you will need to agree on when and why you get together. During the first several months, you probably should get together at least every other week, as you need the team’s input, feedback and assistance in learning and addressing the legal issues of the company. Over time, the purpose of your meetings will likely evolve to more of a focus on the metrics and driving execution of the legal strategy and the team’s underlying objectives.

Fourth, you will want to launch a series of activities on areas of concern or improvement that you identified from your meetings. Often, this is best done by creating task forces made up of high-potential individuals — those stars in the department. Creating these task forces allows you to see how strong these high-potential people are — or aren’t — and shows that you have been listening and are driving continuous improvement. In the past, I have put teams together to look at areas such as creating our strategic long-range plan, outside counsel management, technology improvement and use, pro bono activities and improving diversity.

Fifth, you will want each of your new direct reports to look at their organizations and conduct a similar analysis to what you have just completed. This should preferably be completed in no more than 30 days. Counsel and drive them to “be bold,” as their chances for significant change

and improvement do not come often, and it will get more difficult to make these changes if they are not part of the initial transformation. Now is the best time for your team to “size” the entire department right. Evaluate the benchmark data and ensure that when fully populated, the organization is below benchmark, or otherwise structured, to allow for future expansion with high-quality employees who meet your attributes, values and diversity goals. If the level of talent to fill certain positions currently does not reside in the organization, do not hesitate to leave positions open to be filled later. As your team completes staffing decisions, again, communicate and make clear why the decisions or changes support the company’s strategy, help advance the business objectives and are consistent with the department’s values.¹⁰

Sixth, keep in mind that during at least the first year, the entire department will want to know what is going on and how it impacts them. Your team should think about and develop ongoing communication processes with the entire organization. You may want to consider items like monthly step-level meetings, weekly brief all-hands updates, calls to review priorities, frequent voice messages or emails to the entire team on projects or priorities, quarterly offsites, annual offsites, or dashboards of key priorities (align them all around the common view of priorities and responsibilities).


Remember that your results will only be as good as the strength of the individuals on your team, the alignment on priorities that advance the business and their successes. Now is absolutely the best time for you and your direct reports to choose and empower the team that will make the company — and you — very successful.

After 90 days — focus on the future

At this point, you are well on the way to establishing your department’s culture. Now, focus on the continuing legal work, the strategic provision of legal services to advance the business, efficient deployment of legal resources and further improving your department. You are now working together with your leadership team; this team is running a well-structured law department, will tell you what you should be doing, and will help you in your future tasks and accomplishments. Make sure that it is a good one. Their success is your success, and your success is theirs. You are inextricably tied together.

Don’t forget to continue to interact with the business. You should be meeting at least monthly with the CEO and your peers to make sure they know your agenda, and that you learn their priorities, ensure alignment of priorities, seek feedback on your and your team’s performance, and obtain their assistance in recognizing and rewarding the performance of high achievers in your organization.¹¹

This advice may sound “formulaic” or easy. But, writing it is much easier than executing. While I was drafting this article, it became apparent that at times I have not followed my own advice — but in almost every circumstance where I did not, I wish I had. Nonetheless, this approach must be directionally correct; I have been privileged to lead four efficient and excellent law departments, which were or are very strategic, have obtained significant positive results for the company, and were or are all highly respected and viewed as “leaders” by the board, the CEO, senior management and the workforce. In addition, several attorneys who have been members of our teams have moved on to become successful general counsel of public and private companies.

You have a great job. Your team and department will get great results. You will learn a lot and love it. See how many future general counsel you can find and develop — that is a very important part of your job. Again, congratulations — and if you worked for me, know that I am extremely proud of you. 

Have a comment on this article? Visit ACC's blog at www.inhouseaccess.com/articles/acc-docket.

NOTES

- 1 See Checklists, Preparation Prior to Job Offer.
- 2 See Checklists, Preparation After Job Offer.
- 3 See Checklists, Preparation After Job Offer.
- 4 See Checklists, Action Items for Your Assistant.
- 5 See Checklists, Agenda for Meeting with CEO.
- 6 See Checklists, Agenda for First Team Meeting.
- 7 See Checklists, Questions for Meetings.
- 8 See Checklists, Questions for Meetings.
- 9 See Checklists, Additional Information You Need and Actions to Take.
- 10 See Checklists, Actions for New Legal Leadership Team.
- 11 See Checklists, Agendas for Ongoing Meetings with CEO and Business Leaders.

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November 9, 2012

Keynote Address by Robert C. Weber

1. Introductory Comments

Good morning, and thanks so much for inviting me here today; it's my distinct privilege to address such a distinguished group on such an important topic. Before I begin, however, let me acknowledge and thank the many public servants here today, public servants who dedicate their working lives to improving the justice system in New York. I won't attempt to recognize any one person by name for fear of overlooking someone else, but to all of you who work for justice in New York, thank you for your professionalism and your commitment. Thank you for being with us today; and rest assured you do make a difference in the lives of so many people across the Empire State.

And thanks to Paul Saunders, Chair of the Judicial Institute on Professionalism, for the invitation to speak here today. I really need say nothing about Paul, since he has had such a distinguished career and because his work on behalf of the Institute is so well known; but let me just note that, after all Paul has done for IBM over the years, I would be an ingrate indeed had I not accepted his gracious invitation.

Having accepted that invitation, however, I confess that I worried for a time that I had said yes in a moment of temporary insanity, since only someone bereft of his senses would believe that he could bring new and fresh insight to the group assembled here today. I'll leave it to you to determine how much of my senses I have retained, but I do hope that some small part of what I say will assist our thinking about these critical issues of lawyer independence, professional responsibility and the role of corporate counsel.

Let me also paraphrase the Second Circuit's own Learned Hand, to the effect that, as firmly as I believe in the points I am about to set forth, I also readily acknowledge that I could well be mistaken.

Before I set forth my observations on the independence of corporate counsel, however, I do want to make a slight semantic point, so that we distinguish between the terms independence and objectivity. We often confuse them in our common parlance, as they have common attributes, yet there are important differences as well. We New York lawyers know that our advice must be independent in the sense that it must be given to our client free of improper influence or inappropriate external considerations, including, perhaps especially, personal considerations. On the other hand, we also know that we are not independent from our client, because we are in fact obliged to represent our client's interest as fully as the law permits. On the third hand, as it were, and here is a difference that makes a difference, we know that lawyers have a special responsibility, if not an obligation, to maintain a sense of professional objectivity, so that we do not become intoxicated or misled by the enthusiasm of our clients for a certain result.

So with all that in mind, let me set out the four basic propositions that I plan to address today:

- First, I do not find persuasive the notion that in-house counsel are under greater threats to independence than lawyers at outside firms. I do not believe that any objective data set supports that notion, nor do I think that such a claim withstands the cold eye of real world scrutiny. threats to a lawyer's independence appear in a GREAT many places...regardless of where one practices; whether in-house or as we say, out-house; whether in a big firm in a big city or as a solo practitioner in a small town.

- Second, one very real threat to the perception of in-house counsel's independence sometimes comes from in-house counsel themselves—by too quickly referring controversial or high profile matters to outside counsel; indeed there are times when I worry that referral to an outside lawyer is less because independent counsel is needed, and more because someone in-house doesn't want to bear the heat of making tough and controversial decisions.
- Third, I believe that the general counsel does indeed have a unique role to play in the C-suite. I'll offer a few thoughts on what a general counsel—or any senior in-house lawyer—should do to demonstrate that he deserves to be a full participant in all the company's senior deliberations, whether the topics are strictly legal ones or not.
- And finally, I will set forth my objections to the assertion, often recited these days, that in-house lawyers are to serve as the conscience of the corporation. This is a pernicious concept; a concept that detracts from what does make the general counsel's voice unique; and a concept that in the practical world of the executive suite, seems designed to undermine the effectiveness of a corporation's chief legal officer.

With these themes on the table, I will digress for a minute to touch on a bit of my background, since it helps explain the shaping of my perspectives on these issues of lawyer independence and professional responsibility over my 36 years at the bar; time that includes about seven years in my current position at IBM, and before that, 29 years in active trial practice at a large law firm. This also included a term as president of a major metropolitan bar association, participation in a bar grievance committee, and appearances as lead counsel in two separate disciplinary

cases that proceeded to my former state's supreme court; one that I won and one that I lost by a 4-3 vote that still stings me today. So, I think I can fairly say that the professional responsibility of lawyers has been a subject on which I have thought, and worked, for many years.

2. Challenges to the Independence of Counsel

So with the recognition that I am the prisoner of my own experience, or more charitably said, that I've been enlightened by my experiences, let's turn to the issue of lawyer independence, the focus of today's convocation, and address the first of the four points I referenced a few moments ago. As I mentioned, I do reject the notion that in-house counsel are under greater threats to independence than lawyers at outside firms or, for that matter, than lawyers otherwise in private practice or even solo practitioners. In saying this, I am not minimizing the threats to an in-house lawyer's obligation to render independent legal advice; those threats are real and lurk in many places we can all describe, rather I am rejecting the notion that the threats presented to those who practice in-house are demonstrably greater than those presented to other lawyers.

In fact, these concerns about lawyer independence are neither limited to in-house counsel nor are they new. To illustrate both these points, please allow me to call upon the voice of yet another fabled New York lawyer, himself a contemporary of Judge Hand whom I referenced earlier; here I refer to Felix Frankfurter, who penned a memoir over 50 years ago that included a richly descriptive portrait of how a lawyer can lose his professional soul in service to a demanding client; the quote deals with observations Frankfurter made early in his career regarding a railroad tycoon and his cadre of lawyers; and here is what Frankfurter had to say: "The way Mr. Harriman spoke to his lawyers, and the boot-licking deference they paid to him! My observation of this interplay between the great man, the really powerful dominating tycoon, Harriman, and his servitors, the lawyers, led me to say to myself, "If it means that

you should be that kind of a subservient creature to have the most desirable clients, the biggest clients in the country, if that's what it means to be a leader of the bar, I never want to be a leader of the bar. The price of admission is too high....to my poor little eyes way down in the valley it was very influential in making me think how one wants to spend his life, what the profession of the law is and what it isn't, what one is ready to do and what one is ready not to do. That's the story of how I decided not to become a leader of the bar."

As we know, the private bar's loss eventually turned into gain for academia and the judiciary, but Frankfurter's broader point is perfectly valid today, although the situation he observed occurred close to 100 years ago.

In our day, the most commonly cited argument about the particular threat to independence for the in-house lawyer is also what I believe to be the least critically analyzed argument, and that is the claim that the in-house lawyer cannot in fact be independent or objective because he is employed by one and only one client, with his livelihood dependent on that one client. This is a theme one sees again and again; it is in fact the argument adopted by the European Court of Justice in the Akzo Nobel Chemical case where that court held that Europe's version of the attorney-client privilege did not apply to in-house counsel because attorney independence was lacking; a neat if unpersuasive example of ipse dixit legal reasoning.

Here in the United States this claim is more often found in the literature, unaccompanied by empirical evidence; and purportedly supported by a series of assumptions and rhetorical comparisons to the outside lawyer who, it is said, is in a meaningfully different position because she can better spread her employment risk across multiple clients and multiple client engagements.

I respectfully disagree. Let me first look at outside lawyers, and start with those in the larger firms. In the large law firms of today, where lawyers have so-called books of transportable business they auction among bidding law firms, the financial future of many of these lawyers depends upon their ability to retain that book of business for that client. That book of business directly affects their compensation in the firm, their significance and power within the firm and it is their vehicle for driving off from one firm to another in search of a higher payout or, in the euphemism adopted by so many, as they search for a “better platform for my practice.” So at least for these lawyers, and they are far more common than one may think, their employment risk is not at all diversified; rather it is highly contingent upon their ability to retain the work of a core group of clients.

The burgeoning literature on the business of law demonstrates this point in spades. Firms of all sizes now employ metrics against partners based on how much revenue the partner brings to the firm, how much profit the partner may generate, how much new work the partner brings in, etc., etc. many of today’s law partnerships are far cries from true professional partnerships; instead they have become commercial commitments contingent upon convenience, ready to be jettisoned from the firm’s side when a partner’s billings decrease or she becomes less competitive; or from the lawyer’s side when she decides to trade in her old partners for a new group of partners who promise her more compensation and recognition. This is not to lament the state of modern day practice, a worthy topic but one for another day, but rather to say that the notion that we in-house lawyers face a greater threat to our independence than do external lawyers is both anachronistic and unrealistic.

Nor is my point limited to big firms or headline-making-laterals; it applies to the less publicized partners—the so-called “service partners,” yet another interesting term from today’s legal literature; and to

practitioners in the small towns across America. No one wants to lose a client once gained, and few partners who are not in possession of their own book of business wish to antagonize law firm management, particularly in the current environment where, at least insofar as paying clients are concerned, it appears we have too many lawyers seeking work from too few opportunities.

We who are in-house are in no way immune from threats to independence, but these threats come not from who employs us. The real threat to independence—whether we are speaking of independence to render advice, independence to tell the CEO he or she is wrong, independence to mediate disputes in the executive ranks or independence to halt wrongdoing, whatever the context for the exercise of independence—the real threat comes from within the lawyer herself. Is our in-house lawyer so concerned about her position, her executive status or her compensation that she dare not venture a contrary opinion and becomes in Justice Frankfurter’s vivid term, a “subservient creature”? Is our outside lawyer, in a firm large or small, so concerned about her clients and partners in the law firm that she does not risk giving unwelcome advice? Is the senior associate on track to make partner prepared to say no to the client on whom his advancement to partner may depend? Is the solo practitioner in a small town prepared to bear the town’s opprobrium for a controversial representation? Is our hypothetical lawyer’s financial situation—no matter where employed or by whom—such that being terminated, or losing a big client to another lawyer, or not making partner, would be not only embarrassing but financially disruptive, not to mention potentially ruinous?

These and countless similar questions make plain—to ME in any event—that it is not the employer or the partnership or size of the law firm that affects the independence of a lawyer’s advice...it is, instead, more mundane motives of the type laid bare for us centuries ago by the likes of Sophocles and Shakespeare; motives such as human pride,

hubris and selfishness. These observations are neither original nor new, and they are surely not limited to those who practice law. We could quote any of the great philosophers or religious leaders, but I'll quote only two of my favorites, starting with the Roman poet Horace who wrote "He will always be a slave who does not know how to live upon a little." Or from a more modern perspective, listen to Upton Sinclair, who—in a wonderful quote—said "It is difficult to get a man to understand something, when his salary depends on his not understanding it." These quotes, one rather lyrical and the other darker and cynical, make the point crystal clear: we can lose whatever independence we may have because we fear losing money, status or livelihood, not because of where we work.

Sadly, some of our professional colleagues have—again regardless of where they work—lost sight of who we are as lawyers and why we do what we do; or, as Justice Frankfurter noted, they stopped thinking about "what the profession of law is and what it isn't, what one is ready to do and what one is not ready to do." Here I am only saying that regardless of where we work, our bulwark against a loss of independence must be our sense of professionalism in who we are and what we are ready to do. We are and must remain a profession; a profession that in its roots is engaged in a public service that, as Dean Pound said many years ago, "is no less a public service because it may incidentally be a means of livelihood." And that word "incidentally" is pregnant with meaning.

Now perhaps because I had good mentors who gave me more attention than I deserved way back when I began to practice law, I was taught that lawyers always needed to be prepared to be fired. I was told that, in any long legal career, there would inevitably be times when a client would fire me and that I should always be prepared to give my advice and bear whatever the consequences would be. Over time, there were indeed occasions when clients did not like my advice, times when they simply chose not to follow my advice, and some few occasions

where I was never clear why they switched lawyers, but in all these situations, I always went back to the definition of what it means to be an attorney. That very word, attorney, has its roots in the concept of agency; with the lawyer being a special kind of agent in the areas defined by our professional rules. And as a matter of agency, what has always been clear to me—then and now—is that the client is the principal and the lawyer is the agent; with the principal free to discharge the lawyer for good reason, bad reason or no reason; all because the client should always have the right to discharge the lawyer....subject of course to some few exceptions not relevant to this topic.

The corollary to this principle from the lawyer's standpoint is that we must have the mindset of a baseball manager; always prepared to be fired. This may be my only original contribution to the discussion of the independence of in-house lawyers, although I hesitate to claim it as original since I'm certain others have used this approach as well. When I first met with my CEO, I explicitly confirmed to the CEO that my client was the company, and that as CEO of the client he had the client's prerogative to fire me for good reason or no reason, with notice or without notice, at whatever time he decided he would like a different lawyer; and I should add here just to be clear that this was not some empty gesture, since at IBM we senior executives do not have employment contracts, nor do we have parachutes, golden or otherwise. In my time at IBM, I have been privileged to work with two extraordinary CEOs, Sam Palmisano and now Ginni Rometty, and I had this very conversation with each as we began our CEO/General Counsel relationship. To them, it communicated that I understood clearly who was the principal and, for me, it was a declaration of independence of sorts, demonstrating that I had no expectation other than that I would give them my best effort and advice and that I would do so fully prepared for whatever the consequences might be. In neither case, did we ever touch on the topic again...but my CEO and I do understand each other on this important point.

3. The Flight to Retain “Independent Counsel”

My second point today is that, at times, in-house lawyers themselves act as if they do not believe they are independent. Everyday we see examples where an allegation, issue or claim arises regarding an institution, and we see that in-house counsel or the board retain external counsel to do an “independent investigation.” Now there are certainly times when an outside counsel may be advisable and even necessary because of the demands of a regulator or because of an issue of perception or where the board or management find the in-house staff or general counsel to be feckless. But there are many, perhaps even most cases, where the general counsel should be fully prepared to manage the inquiry herself, to make the tough calls herself, and, most importantly, to take on the responsibility herself.

I analogize this in my mind to the judicial doctrine of a court’s duty to sit; and while the analogy cannot be stretched too far, I think we general counsel have a duty to do our jobs in highly charged and controversial matters. Indeed, in those tough and highly charged times our responsibilities and obligations may be at their greatest. There have been any number of high profile issues involving questionable CEO behavior in recent years—too many to be sure—and while in many cases the legal or fact finding tasks were outsourced to external counsel, there were also a good number where a courageous general counsel managed the situation herself and, let the facts determine the results, as well they should; and in those matters those general counsel gave credit to their independence and professionalism.

It is, of course, the long-term best interest of the client that should provide the guiding principle for how matters of this type should be handled. Obviously if the general counsel herself were implicated or involved in any way or where a cynical and distrustful regulator demanded an external referral, the decision to go outside would surely

be clear; but too often we see an immediate referral to outside counsel when allegations arise against a CEO or other members of senior management; or when allegations of corruption are made...and in these situations, I give a respectful salute to those general counsel who do not reflexively conclude that an outside voice is needed, but rather take a sober, mature and fact-based approach in deciding whether or not the matter is best managed by herself, or by herself with the assistance of an outside firm, or whether the matter is handed over to an outside firm.

It is, in summary, sometimes easy to say that a task demands an outside voice, when what it really needs is a courageous voice, one prepared to grapple with a difficult issue and to live with the consequences of doing so.

And while on this topic of referrals to so-called independent counsel, I would like at some point to see some meaningful analysis done as regards instances where referrals to external counsel have been made; I think fair questions can be asked, for example, as to whether external counsel operate as efficiently and productively when retained as independent counsel as they do when retained and managed by knowledgeable inside counsel; and is it in the shareholders' best interest to ask outsiders who have none of the relevant background to educate themselves at the shareholders' expense when there are respected professionals inside who could do that work? Again, these and many related questions deserve more disciplined analysis than I believe has yet been provided by the literature, the regulatory community or the courts.

4. Becoming an Essential Legal Advisor

Let me move now from independence per se to my third point, and describe some of the traits that make for a successful senior in-house lawyer. A good place to start the discussion is by recognizing that body of literature, a body both thoughtful and substantive, that has arisen in

the past few years regarding in-house lawyers in general and the role of the general counsel in particular. We now have—if you can believe it—magazines, blogs and social media sites devoted to those who practice law on the inside of institutions, and some of this—and I do mean some of this—is actually quite valuable and well done. No one source aspires to present as comprehensive and formal a review of these issues, as does the volume entitled *Indispensable Counsel*, co-authored by Christine Di Guglielmo, one of our participants here today, who will be presenting after the lunch break. Christine's book, co-authored with former Delaware Chief Justice Norm Veasey, takes the reader on a soup to nuts tour of the in-house landscape, with numerous citations to interviews with public company general counsel, professors and others.

We must also acknowledge a debt to the legal thought leaders and thought provokers who have so capably brought these issues of in-house professionalism to the forefront over the past decade. Here we must, of course, note the work of Ben Heineman, a body of work that almost by itself forced both business leaders and their lawyers to acknowledge the special characteristics of the role of the in-house lawyer, and then to undertake a thoughtful analysis of the implications of that role. These thought provokers—a term I much prefer to thought leaders—have argued quite rightly for a broad acceptance of the general counsel as a full partner at the leadership table in public companies. Ben Heineman's arguments in this regard need not be repeated here as they are now quite familiar, so all I will note is that his fundamental thesis is perhaps best captured by his assertion that the first question a general counsel must address is, *is it legal*, and that she then needs to be a full participant in the follow on discussion of *if it is legal, is it right*.

These notions are instructive, fundamentally right-minded, and I fully endorse them. Indeed, based upon my interactions with many other general counsel, both individually and in groups, there is no dispute whatsoever about this, and it is now the accepted model in practically all

significant companies and institutions. To be sure, there are still some oddities where the legal function is marginalized or in today's vocabulary disrespected, as in some few companies I've heard of where, for example, the general counsel doesn't report to the CEO but actually reports to an administrator or, most surprisingly, to a financial officer, but oddities of this type are so out of step with the mainstream that they only seem to prove the validity of the broader rule.

So if general counsel are indeed to take our place at the senior table, how do we get there? Here again, I go back to basics. Like everything else in the profession of lawyering, we take our place at the senior table by earning that trust, each and every day, just like outside lawyers in law firms have to earn the trust of their clients, and just like lawyers have earned the trust of clients over the centuries. This topic of how we earn that trust is a rich one, also worthy of another discussion on another day, but let me offer up four basic rules for earning your place at the table as the essential advisor to your company:

1. First, never lose your discipline or your willingness to get your fingernails dirty. So very much of what we do and render advice about lies in what I call the "it depends" world. It depends on this fact or that fact or this context or that context. And it can be tempting for a general counsel to stay at a level of thirty thousand feet, and live in the world of "it depends." Tempting, but surely wrong. A modern general counsel must be prepared to be the master of the pertinent facts, and to do that requires discipline more than anything else. If you have as good a grasp on the facts as is possible in the context, you can leave the world of "it depends," and use your maturity and judgment to give the client meaningful advice.

2. Second, always make sure to separate your legal advice from your business advice or, what I call, your prudential advice. The client deserves your very best legal advice, in crisp fashion and with only so much detail as is necessary to make your advice comprehensible and able to be acted upon by a sophisticated businessperson of good faith. Then offer your non-legal advice, again in clear terms, taking care never to conflate or confuse the two. When these two become intermixed, the legal advice moves from the realm where it must be listened to, to another realm where your voice is robbed of its uniqueness and becomes but one of many. Again, our clients deserve our advice on these questions of is it legal and is it right; and they deserve those answers in a way that makes it clear which question we are addressing.
3. Third, always be objective in your analysis, but never confuse your objectivity with independence. This is a point I touched on earlier but it bears repeating. As an in-house lawyer, your opportunity to offer objective analytical advice may well be unique among your peers; you are, by training, and position, more able to examine an idea from all sides and to offer either support, criticism or modifications. Your advice must always be cold blooded as regards the facts; accepting them for what they are and never assuming they are what you wish them to be. You must maintain this objective analytical foundation...even though you are not independent in the sense that you do in fact represent your client and must represent it with zeal.
4. Finally, always remember who is the client, and be an advocate for the best long term interests of your client. Just as the conflation of legal advice with business advice so easily entraps many in-house lawyers, so too do many

lawyers cause themselves so much trouble by forgetting who the client is. In my years of private practice and my years engaged in the lawyer discipline process, I can say with certainty that more trouble, consternation and ruined professional careers have come from violating this one rule than any other. It is here where some in-house lawyers do go wrong; thinking that the business unit in which they work or the business leader they counsel is the client. From the perspective of an in-house legal manager, I can tell you that we at IBM spend substantial time keeping this issue in the forefront of our global team. Indeed, when I joined IBM, I used the occasion of my first presentation to the assembled lawyers to speak on this very topic—who is the client—and I emphasized that the client is not the business leader you counsel, or the business unit you advise, or the transaction on which you work. It is IBM, first, foremost and forever.

5. I'm No Jiminy Cricket

So now let me briefly touch on the fourth and final topic I said I would address—this new notion that the law department or the general counsel should be the conscience of the company. As I mentioned, everyone now accepts that the general counsel should be an essential advisor at the senior executive table. As with many good ideas, however, this description of the general counsel as both senior legal counselor and full executive participant has become, for some people, merely a launching point for a very different and more expansive vision.

Like the proverbial frog in the hot water who does not realize his peril until it is too late, I think that some of these new descriptions of the general counsel will, by increment, create a distorted set of perceptions and expectations that may actually diminish the voice of the general counsel. Let me start with Ben Heineman's belief the in-house counsel

should be a lawyer/statesman. I confess to being slightly uncomfortable with this notion, but I can accept that term insofar as it attempts to capture the notion the general counsel can play a special role as the executive suite's honest broker. After all, a trusted general counsel is often the natural intersecting point for the resolution of disagreements among other senior executives or corporate functions...not only because the CEO often views such intramural disputes with all the enthusiasm of a parent being asked to resolve a fight between children about crayons, but also because the other executives come to the general counsel to raise these issues in what they believe is a protected, perhaps even privileged context. So "lawyer/statesman" is a term I can accept in that context, particularly because the "statesman" reference again harkens back to the lawyer as agent, acknowledging that the general counsel has an agenda far broader than her own; an agenda that allows her to be the honest broker in resolving the occasionally fractious debates that arise in corporate headquarters.

My discomfort on these new and expanded descriptions of the role of general counsel increases considerably, however, with those who describe the modern general counsel as the "guardian of corporate integrity," primarily because I have no idea what that means. And I explicitly part company with those who now assert—and there are many of them—that the general counsel should be described as the "conscience of senior management," or, even more troubling to my mind, "the conscience of the company."

Few concepts could be as destructive to the lawyer's right to sit at the senior table as it is to place around the lawyer's neck the millstone of being the company's "conscience." And even more debilitating to the effectiveness of a general counsel would be the senior team's belief or perception that a general counsel actually believed she was the conscience of the company, or even worse, acted like it. I cannot imagine what it would be like to act that way, but it certainly takes no

imagination for me to say that if I did act that way, my tenure as general counsel would be short-lived...and justifiably so.

This notion of being the conscience of the company is flawed in so many respects that it is hard to know where to start, but let me try. First, despite appearing to be the product of more modern thinking about the lawyer's role, this notion of lawyer as conscience or guardian of integrity actually reflects more of the long rejected and hoary thinking of lawyers as some elite group of illuminati or philosopher kings, dispensing rules and prescriptions to the benighted; it reflects a lawyer-centric view that assumes lawyers have special insight, or perhaps even monopoly, into ethical rights and wrongs.

Again, I disagree. There is nothing in my training as lawyer that makes me better or worse suited on matters of conscience than any other senior leader at my company, and for me to claim such a position, or better put, to pretend to take such a role, would give rise to well founded resentment and criticism from my peers. At the senior table at our company, I see a number of gifted men and women, each of whom has, among other positive attributes, a well formed conscience, and a personal compass well attuned to our company's values and beliefs. They need me to be many things for many reasons, but serving as their conscience is most definitely not one of them.

Viewed correctly, a company's ethical heartbeat, its governing ethos, should reside in no one person or any one function. The company's ethos, its moral compass, should be ingrained in every person and every function, as part of the corporate DNA. To say that the law department or the general counsel is the "conscience of the company" allows the rest of the company to think that these issues are primarily the responsibility of others, thereby obscuring what should be a thoroughly pellucid governing principle of institutional life: everyone is part of the institution's moral construct and everyone is responsible

for the observance and execution of the company's values....not only or even especially the lawyers.

Now I want to be clear here on one subsidiary point; we lawyers are of course expert in legal ethics and in so many respects it is true that legal ethics and the law itself reflect broader ethical norms such as loyalty, discretion and honesty. I am in no way eschewing that ethical responsibility. Rather I am only noting that when it comes to business ethics or societal ethics, I am but one voice, and not necessarily the authoritative voice.

Perhaps more fundamentally, the descriptor of the general counsel as the conscience or guardian of the company leads to fuzzy thinking. We as lawyers are trained in a certain discipline and in a certain way of thinking. On the question of "is it legal," we have a special responsibility and authority to find the right answer, to explain it, and others should and, in many cases, must listen to us.

But when we take on the role of conscience to the company, we abandon the disciplined confines of legal reasoning and become just another voice in the cacophony of modern day would be ethicists; the unique nature of our voice and opinion becomes diluted to the point of being unrecognizable; and we will eventually find ourselves reduced to the status of the chattering heads on television, arguing back and forth in today's version of hell.

So let me wrap this topic up with as clear a statement as I can make on this issue of the general counsel as the conscience of the company: I have never been, am not now, nor will I ever be, IBM's Jiminy Cricket.

6. Conclusion

So with that, and with the admonition that we should always let our conscience be our guide, let me wrap up by saying that these topics of independence for all lawyers, including general counsel and inside lawyers, are topics that call for our profession's best and brightest to analyze them, explore boundaries and develop new prescriptions for the future. I am certain that over the course of today, this convocation will play a meaningful role in that critical task.

Thanks...