



CLO Club Insight #3 – Investment of Relationships

New GC? Top Ten Ways to Succeed in Your New Role

- The first months in any new role has a tremendous effect on how an employee is perceived and can determine that employee's success. For a new General Counsel that reports to the CEO and the board of directors, this effect is amplified because of the high profile of the position. Click [here](#) for some key actions a GC can take in the first few months on the job to ensure success.

The Business Side of Legal Advice

- Set the tone—establishing who the GC reports to and what the job description consists of are crucial first steps; structure the legal department; expose legal to business groups; and use outside counsel intelligently. Click [here](#) for advantages of an integrated legal and commercial approach for any organization.

Navigating the Complexities of C-Suite Relationships

- This [Executive Report](#) provides an overview of discussion results from ACC's CLO ThinkTank session titled "Navigating the Complexities of C-Suite Relationships" held in San Diego on October 23, 2006.

Coaching vs. Mentoring Roles/Responsibilities

- The coach's role is to work with the coachee in a non-directive manner to achieve a specific result or outcome. The mentor's role is to provide ongoing career guidance and advice to the individual they are mentoring in both formal and informal ways. Click [here](#) for a list of responsibilities for each role.


Written Resources *(see attachments)*


- New GC? Top Ten Ways to Succeed in Your New Role
- The Business Side of Legal
- Navigating the Complexities of C-Suite Relationships
- Coaching vs. Mentoring Roles/Responsibilities

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.

New GC? Top Ten Ways to Succeed in Your New Role

 Sep 22, 2014 Top Ten

 By Patrick Johnson, JD, Serengeti Law

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By [Patrick Johnson, JD, Serengeti Law](#)



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Overview

The first months in any new role has a tremendous effect on how an employee is perceived and can determine that employee's success. For a new General Counsel that reports to the CEO and the board of directors, this effect is amplified because of the high profile of the position. The following are some key actions a GC can take in the first few months on the job to ensure success.

1. Get to know your stakeholders

It's important to get to know stakeholders both to make that valuable first connection and to understand what they consider success for the legal department. These are the people that will judge your success and as always, first impressions count. In the first couple of weeks, you need to make time with the CEO and board members to understand what they think success looks like and, perhaps more importantly, how your success will be measured. That said, it will be important to quickly assess what you think the legal department should be, including changes that should be made in the short-term versus long-term (staffing, resources, IP), as well as additional responsibilities that should be borne by the legal department that may not currently exist.

2. Get to know your internal clients and their teams

You should also make time for your internal clients - the executives in charge of the business units you'll be supporting. Discuss what they think the legal department can do to make their jobs easier and how best to deliver legal services to them. This is the oh-so-important start of building your network within the company that, at the executive level, becomes as important as the job you do in determining your success. It is also helpful to get to know your internal clients' teams, as you will find they are the "boots on the ground" and will be of aid to you in the navigation and carrying out of your internal clients' needs.

3. Know and assess your team

Next, get to know and assess your team. Meet with the team as a whole to share with them your short- and long-term vision of the legal department. Get to know their workloads, what their pain points are, and get their thoughts on how they can deliver better services. Let your team know that you'll seek their feedback and they will have personal ownership in any initiatives that you have for the department. It may be a good idea to establish a regularly scheduled team meeting each week to touch base on status of various projects and to determine staffing or other needs for such projects.

4. Look for ways to let your talent thrive

Once you've assessed the talents of your department, look for ways for them to use those talents. Maybe your tech-savvy, young corporate attorney would relish implementing a new contract management system or enjoys working on M&A deals. Give him those projects to the extent possible. Maybe someone has shown talent in managing law firms: let her help define or improve your departments billing guidelines. If you're able to get headcount, surround yourself with talented people who will commit to working with you to achieve the department's goals. Remember: Ultimately aligning people with their strengths not only builds efficiencies, it also builds morale.

5. Learn your company's business

Learn about your new company's industry and businesses, as well as your company's business model and philosophy. The GC's job isn't just to manage legal work and advise on legal matters; you are now a business partner. Knowing a company's business often isn't necessary in a law firm because you're working on a discrete legal matter in your field of expertise. In a company (especially at the GC level) knowing the business is essential in both how to approach the legal work and having credibility with your internal clients.

6. Understand your company's culture

The company politics, how to present information both to upper management and to your team, and the business lingo can be different from company to company. Not understanding the culture quickly can make you stand out, and not in a good way. It's also important to know the groups that are most valued and thus have the most power within the company (hint: it's usually the group that drives revenue). Different groups may have different cultures as well – the sales team's culture may be entirely different from the engineering team's culture, for example. If you're coming from a law firm, the whole corporate environment may come as a shock, even if you've worked with corporate clients for decades. If you're coming from another in-house gig, especially if you've been at your former company for a long time, you'll need to be aware that what is considered a "win" at your old company may not be viewed as such in your new environment. For example, some companies may only view visible, individual accomplishments as a success, whereas at a more team-oriented company may look at this as boastful grandstanding and may place more value on team success. Be prepared to quickly learn and adjust to your new company's culture.

7. Assess your law firm relationships

The next relationships to assess are those of your law firms, specifically the law firms with whom you do the greatest amount of highly visible work. If these are inherited law firms, you'll need to determine whether you're comfortable with them and, if not, bring in firms that you do trust. There's no better time than having a new sheriff in town to clear out dead wood and re-establish pricing and performance expectations. Firms that you trust, value client service and deliver highest quality of work with the greatest value should be the winners. All law firms say they value client service. Delivering on the client service promise consistently is something that few firms tend to do. Once you are comfortable with your firms, you'll need to let them know how work will be done moving forward with budgets, billing guidelines and, ideally, project management techniques.

8. Assess your infrastructure

One win that should always be considered is whether there are opportunities to save money and increase efficiency within the department in a measurable way. Why measurable? You've already talked to your stakeholders to determine what they consider wins for your position, now you have to show them you've achieved this success. The only way to do that convincingly is to have data and metrics to back up your claims. The first place to start is looking at the operational and product delivery process of your legal department and whether the right technology is there to support it. How do your attorneys stay on top of their legal matters? How do they communicate with their law firms? There are many matter management software solutions that allow for the creation of matters in one place in which outside counsel can connect and add matter updates, documents and important matter information. You can then get regular reports on these matters so you will never be in the dark or surprised about what is going on in the legal department. The value of this can be measured in a variety of ways: decreasing the cycle time for various types of matters, reducing the overall estimated liability of the company, reduction of claims due to targeted training by the legal department, and more. Furthermore, this software saves in-house attorneys time approving invoices because it's automatically routed to invoice approvers – no carrying invoices from office to office for approvals. The decrease in invoice approval time not only improves the relationship with the department's law firms, it can allow for a negotiated early-pay discount. Money saved from instituting alternative-fee arrangements on matters can also be tracking in this type of system.

Other areas where adopting technology can increase efficiency in the department are an IP management system if there is a great deal of IP work. A contract management system for contract-heavy departments saves untold amount of time looking up contract, clauses and contracts dates for your in-house attorneys. If your company receives a great deal of legal holds, considering legal hold software can also save a demonstrable amount of time as well. It all depends on what your stakeholders are looking for, the nature of your company and its business, and how your legal department is currently set up.

9. Pair with your Human Resources Director

One branch of a GC's role that sometimes gets overlooked until it's too late is internal employee matters, which otherwise fall under the auspices of the HR Department. However, it is never too early to review HR's policies and procedures, ensure managerial compliance with anti-sexual harassment measures, and revise offer and termination letter templates in order to manage the volume of employment matters that will arise during your tenure. Then on an ongoing basis, try to work together with HR to stay apprised of any ongoing and new matters that come up, so as to mitigate exposure and company liability.

10. Understand where your legal dollars are being spent

Another quick win is assessing the department's overall legal spend and how to best manage it. Again, many matter management software packages also have an e-billing component, allowing all legal invoices to be entered into the system. There are several advantages to doing this. The first is you will have a complete view of the spending of the legal department that is accurate and up-to-date – [reports you can't get from your AP department](#). Second, you can actively manage the spend going through the system, like outside counsel rate changes, expense code violations and matter budget violations, which are automatically flagged in the invoices. This is real money saved that can be reported up to a GC's stakeholders.

Bonus- Make a plan

It's time to make a six-month plan with the goal of building credibility and creating departmental momentum. A new GC needs to get some quick wins during this period in order to let stakeholders know she's on the right track. She also needs to continue to get buy-in from her team that is helping implement these changes. A couple of keys to consider here: First, you can't boil the ocean in six months, so focus on a couple key areas to achieve wins and make sure to achieve them. Second, make sure that these wins matter to your main stakeholder(s), because a win doesn't make a sound if your boss doesn't care to hear it. A substantial win is the goal here, but ideally it should tie in to your overall, long-term business priorities and re-enforce new behaviors that you're trying to instill in your department.

Coming into a legal department and creating immediate change is a difficult prospect for any GC. Getting to know all the key players in the company, the company's culture and business, and your law firms are the key to understanding where you should focus your efforts during the first six months. Once a plan is in place it needs to get clearly communicated to both your stakeholders and your team to set expectations and get everyone on board.

Quick wins in a legal department often include achieving legal results, increasing efficiency, saving money, and better allocating resources. Using technology (or using it better) is an important tactic in achieving these goals. After six months, if your network is in place and you've achieved your planned goals, your initial credibility will be established and the groundwork will be laid for pursuing other long-term goals for the legal department and the company.

<p>The information in this Top Ten should not be construed as legal advice or legal opinion on specific facts and should not be considered representative of the views of its authors, its sponsors, and/or the ACC. This Top Ten is not intended as a definitive statement on the subject addressed. Rather, it is intended to serve as a tool providing practical advice and references for the busy in-house practitioner and other readers.</p>

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<http://www.acc.com/legalresources/publications/topten/new-gc-top-ten-ways-to-succeed-in-your-new-role.cfm>

CHEAT SHEET

- *Set the tone.* Elevate the profile of the legal department by setting the right tone — establishing who the GC reports to and what the job description consists of are crucial first steps.
- *Structure the legal department.* Structure legal to mirror the rest of the management level structure to position senior lawyers on parity with their business counterparts.
- *Expose legal to business groups.* Force lawyers out of their comfort zones by giving them exposure to multidisciplinary meetings.
- *Use outside counsel intelligently.* While there are merits to driving competition and spreading legal work around, there is also something to be said for consolidating legal work amongst three or four law firms and identifying a relationship manager in each firm.





The Business Side of Legal Advice

By Mary Martin

Articles have been written on the advantages and perils of in-house counsel stepping outside of a technical legal role. That debate is not the focus of this article. The advantages of an integrated legal and commercial approach are incomparable for any organization. Certain favorable conditions need to be in place to realize these advantages. Unless in-house counsel take a thoughtful, proactive approach, these conditions may be elusive.



This article recommends some approaches and tools including the best way to gain the confidence of business colleagues. It also provides methods for getting the most out of a legal department and working with business counterparts effectively.

The context

Although external law firms will always have a valued place, the insights of an internal lawyer who works in the day-to-day business are hard to replicate. Anyone who doubts this should speak to a new general counsel who heavily supported his or her now employer from an external law firm prior to taking on an in-house position. Although that client was a major client with whom counsel had extensive and regular contact, many novice GCs will admit that the learning curve is both humbling and steep.

Most lawyers considering an in-house position are drawn to the prospect of a soup-to-nuts involvement in new transactions or initiatives. Goodbye and good riddance to the time when a client delivered a signed letter of intent to the lawyer's inbox with curt instructions to paper the deal. Even if the terms of the letter of intent are truly non-binding, it has been structured without a lawyer's advice. This is frustrating to the lawyer. From the organization's perspective it is much easier to reflect the best advice in the terms of the initial document — and very difficult to take things off the table that have been at least notionally settled by the business people.

There is a good possibility that this no-win situation can be avoided if the internal business client better understands the value-add of involving the in-house lawyers in early planning and discussions. Better yet, a client's appreciation of the lawyer's legal and commercial strengths paves the way to the best results for the organization.

Gaining the confidence of business colleagues sometimes involves

overcoming institutional or individual biases. Stereotypes abound including the accusation that lawyers are often “naysayers.” Even the most insightful, beneficial internal legal commercial advice does not benefit the organization if it falls on deaf ears.

The risks in ring fencing legal counsel

The General Motors (GM) faulty ignition switch situation highlights the risks of not integrating lawyers into key functions and divisions. Although various GM engineering groups and committees had attempted to resolve a faulty ignition switch problem, investigations failed to make the connection between ignition problems and the non-deployment of airbags leading to deaths and injuries. During a 10-year period there were at least related 54 crashes, resulting in the deaths of 13 people.

GM commissioned an independent investigative report (“The Valukas Report”) to understand what went wrong. The report contained several important findings on the role of GM's in-house counsel in the switch recall. GM's general counsel was only aware of the defect after a GM committee ordered the recall. Because settlements of less than \$5 million did not require the general counsel's approval, he did not know about several similar claims settled for less than \$5 million. If he had, he would have seen a worrisome pattern.

Among the recommendations of the GM Valukas Report was to encourage information sharing across groups and formalize the process by holding regular meetings between different groups such as engineering, vehicle safety and legal. Taking it one step further than the Valukas Report, legal can often play an effective integrator role — breaking down silos between business

functions and units that interfere with information sharing and identification of worrisome trends. With highly developed project management skills learned on transactional experiences, lawyers can be effective at identifying and troubleshooting problems and following through on action items to resolve these problems before they affect corporate reputation and operations.

Setting the tone

To elevate the profile of the legal department it is important to establish and maintain the right tone. This may start with the general counsel's role (or other senior counsel where there is no general counsel). Three questions are important:

- Is the general counsel a member of the executive management team?
- Who does the general counsel report to?
- What is the general counsel's job description?

It really matters. If the general counsel is not seen as a trusted advisor and participating colleague at the executive management table it could be difficult to position the rest of the legal team in a manner which optimizes the wide range of commercial and legal skills each has to offer.

The position description and performance plan for the GC role should go beyond a technical legal role and identify and support the key organization strategies. A good job description is at least as much about commercial strategy and reputation as it is about law. The following is a sample description of an overarching goal in a general counsel's annual performance plan:

To build and develop a strong, committed legal team which, through



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effective legal contracts, strategic negotiations, proactive issue identification and skilled legal and commercial advice: (a) protects and enhances [organization] and its operating divisions' reputation and commercial interests, and (b) thereby contributes to a positioning of [the organization] as the preeminent [include benchmark to industry including competition].

If the GC reports to the CEO and is a member of the executive management team, the GC will be in a better position to gain operational understanding and contribute to strategy and business plans. This in turn allows the GC to both promote the legal department and guide the department in a proactive rather than reactive management of the organization's legal needs.

Some general counsel do a legal department annual report as a vehicle to promote the department. This annual report is made available to business colleagues and includes performance metrics such as savings in the external legal spend. To the extent this annual report looks like it is based on the principles of a business plan, it may affect the way others view the legal department. It is harder to discount in-house counsel's expansive role when the department relies on business plans and performance metrics following a similar approach to the method expected from the business divisions.

Structuring the legal department

Legal departments are often quite flat organizations, consisting of the general counsel, possibly an associate general counsel, and then everyone else. A structure that parallels the management level structure used in the rest of the organization sends a strong signal. Specifically, if the legal department structure includes vice presidents, directors and managers, there is an instant connection with others in the organization holding these offices. This is critical and positions lawyers as senior professionals on parity with

business counterparts throughout the organization. Once a director level lawyer attends directors' meetings historically attended only by business folk — and contributes to the business discussion — he or she will be seen differently.

This structure has other advantages. When the general counsel's direct reports are reduced, the general counsel is freed up to market the legal department and participate in key strategic and other discussions. In addition, this organization approach motivates the lawyers in the department who see a tangible structure allowing for career progression.

Exposing lawyers to business groups

Specific lawyer performance plans should identify goals that reward participation in cross-discipline committees and teams. All levels of lawyers should attend and participate in multidiscipline meetings and join key internal committees. For example, a lawyer can attend the capital construction division's regular internal meetings. The risk committee is another key internal group where lawyers' participation is helpful. If lawyers are not only prepared to identify the risks but also contribute to work around or mitigation strategy discussions, there will be a parallel growth in both client confidence and the legal department's understanding of business challenges.

Establishing this healthy interdependency sometimes entails forcing lawyers out of their comfort zone. Lawyers need to push themselves to join discussions. To make the most impact, of course, requires a lawyer's upfront investment in a type of due diligence process. Such due diligence provides a better understanding of the business operation, including history and context for a particular business discussion. Gaining confidence, a lawyer may have the courage to boldly invite himself or herself to key internal

Specifically, if the legal department structure includes vice presidents, directors and managers, there is an instant connection with others in the organization holding these offices.

meetings — even if not initially included in the attendee list!

Presentations at “lunch and learns,” or other internal forums, afford another opportunity to make a connection with business colleagues. Clients can be canvassed for topic requests if the legal department's day-to-day work doesn't readily identify common business challenges and opportunities.

These meetings and initiatives present opportunities to showcase lawyers' broad array of skills and experience. At least as importantly, lawyers are provided with the opportunity to listen, observe and gain a greater understanding of a client's main priorities, concerns and objectives.

Invest in the legal team

Leadership and other development programs, often not aimed specifically at lawyers, can be powerful professional accelerants. For example, professional development focused on effective oral presentation skills can help lawyers better engage their internal clients. Lawyers need to be good communicators. Although lawyers typically have excellent writing skills, verbal communication skills can be weaker. Positive or negative impressions often turn on effective oral and presentation skills. Membership in courses and organizations including Toastmasters help foster this. A communications coach can put together an interactive day program for the entire legal

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department that introduces all of the elements of strong presentation skills. This has the incidental benefit of being an enjoyable team-building experience.

Stretch assignments are effective at developing all-around skills. Provided the general counsel accepts the need to check his or her ego at the door, placing another lawyer as the lead in a key briefing of a senior management member is incomparable training. Such opportunities can invoke invaluable lawyer loyalty.

Performance plans should include goals related not only to specific file accomplishments but also to soft skills such as empathy, grace under pressure, collegiality and teamwork. Empathy is sometimes overlooked in assessing strong performance. However, the more you understand a colleague's points of view, the more you can provide effective legal advice and the more you influence him or her.

Working effectively with clients

Client opinion survey

A client opinion survey is a useful tool that helps the internal team improve legal services. Both the content of the survey and the identity of the survey recipients are important. Questions should be thought through carefully. The recipients should include employees at different levels of the organization — but only if each recipient has actually had meaningful dealings with the legal department. The survey questions should include

a continuum from “strongly agree” to “strongly disagree.” To avoid false neutral or average responses a category of “don’t know” or “cannot comment” should be included. Most helpfully, the survey should include ample room beneath each question and at the end of the survey to provide specific commentary.

Examples of questions to include in a client survey include:

- I can easily and readily reach legal counsel when required.
- Legal counsel is proactive in identifying and communicating general legal developments that are of interest to my work.
- Legal counsel keeps me informed about any issues and/or changes that affect me and/or my team on specific projects or initiatives.
- I am generally satisfied with the number and content of seminars given by the legal department, which seminars discuss legal issues relating to my business unit’s work.
- The legal department consistently facilitates my ability to complete work by responding to my requests for services (providing forms, agreements, advice, etc.) in a timely manner, given my needs and priorities.
- The legal department consistently facilitates my ability to complete work by providing viable alternatives in those circumstances where it advises that substantive issues prevent/prohibit transactions that my business unit proposes.
- Legal counsel works collaboratively with project coordinators and contributes to the overall project.
- Legal counsel shows initiative in implementing a plan focused on achieving my business unit’s objectives.
- Legal counsel takes action to minimize unanticipated costs and/or eliminate possible losses through risk mitigation.
- The legal department’s choice, and ongoing oversight, of external

legal counsel has been generally satisfactory to me.

- Legal counsel consistently identifies key or underlying issues in complex situations in order to assist my business unit in making decisions.
- Legal counsel understands the political and/or business environment I am working in.
- The legal department has sufficient skill sets and expertise in diverse areas of law to properly handle the organization’s legal issues.
- I am satisfied with the legal department’s and corporate secretary’s input on board reports.
- I understand what is expected by the corporate secretary during the board cycle and why it is expected.

Once the surveys have been completed, the survey results should be collated and discussed. Specific action items arising out of the survey should be listed and circulated to business colleagues. Ideally legal department meetings regularly track progress against these action items. If the general counsel prepares a legal department annual report, it might include the survey results, action items and milestone reporting.

Client instruction form

A user friendly client instruction form can help both clients and lawyers. Too often a long email chain is forwarded to a lawyer with instructions to provide legal support. Sometimes information in the bottom half of the chain is no longer even relevant. Developing a client instruction sheet including items such as: description of legal services required, client contact person(s), contract value, timelines, lawyers who have previously worked on this or similar matters, and “additional considerations” saves time and leads to a better result. On occasion it reveals whether a so-called urgent matter has been sitting on someone’s desk for several days or weeks. If there is a pattern

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Not only do [external counsel] provide resources when the volume of work cannot be handled internally, but they have a depth of expertise in areas not often covered by the internal team.

of unrealistic and unfair turnaround expectations, a candid discussion with the business unit can nip that problem in the bud.

Board reports

Legal departments often perform the corporate secretary role. Here too there is an opportunity to guide board report authors in the structure and wording of an effective board, or board committee, report. Since there is a big information gap between management and independent board members, there is an art and a science to preparing board reports. Upfront, cogent executive summaries — including the decision management is seeking from the board — should frame the report analysis. The report should include the historical context including a summary of when the matter, or a similar matter, has previously been before the board.

Depending on the nature of the project or initiative the content of a board report will vary. It typically includes a risk analysis and budget considerations at a minimum. Since the wording of resolutions is not intuitive for most non-lawyers, written guidelines including sample resolutions are usually appreciated.

Rather than taking the role of a stern schoolteacher marking a student's essay, the lawyers can work closely with business counterparts to anticipate board questions and concerns in the written report. In other words, if handled with sensitivity, lawyers can bring clients along to the compelling proposition that lawyers are helping them succeed and look good in front of the board.

Lead lawyers

In organizations with two or more divisions or operating subsidiaries, assigning a lead lawyer to oversee that group's legal needs is highly effective. If possible, that lawyer should attend the operating divisions regular management meetings. In addition to the

obvious benefit of this integration, it reduces multiple client group legal contact points and the occasional problem of client opinion shopping.

Lawyers at intermediate levels and beyond can also lead legal centers of excellence in which he or she is the lead subject matter “go to” person, forming legal working groups, monitoring developments in the area, and directing the preparation of relevant precedents. The centers of excellence will vary from organization to organization but examples include technology law, construction law and commercial leasing.

Intelligent use of external law firms

There are compelling reasons for retaining a significant amount of legal work in-house that go beyond financial advantages. Internal lawyers are involved in day-to-day business and know the operations to an extent outside counsel cannot replicate. Also, in order to attract and retain good lawyers involvement in the more interesting files is a must. Good work is a good motivator.

Nevertheless, external lawyers will always have an important place. Not only do they provide resources when the volume of work cannot be handled internally, but they have a depth of expertise in areas not often covered by the internal team.

Like any outsourcing work, external legal resources require careful direction and management. It is important that the management of external legal services is led by the legal department. Although the general counsel and other lawyers may work with their client in instructing and working with external counsel, lawyers are best able to assess whether the firm is delivering value for money.

To make sure that lawyers are retaining outside firms, all external law firm budgets should come under the general counsel's budget. If the legal department does not control

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While there are merits to driving competition and spreading legal work around, there is also something to be said for consolidating legal work amongst three or four law firms and identifying a relationship manager in each firm.

the budgets clients can go directly to law firms without the legal department's involvement. Not only does this lead to potential duplication and other inefficiencies, the end product may suffer. If legal services are not centralized in this manner, the legal department will not know of worrisome trends and developments. This in turn impairs the general counsel's ability to operate on the no surprises basis which CEO's and boards expect and need.

While there are merits to driving competition and spreading legal work around, there is also something to be said for consolidating legal work amongst three or four law firms and

identifying a relationship manager in each firm. This drives efficiencies by ensuring that the chosen list of key firms understands your organization thoroughly. It also incentivizes firms receiving significant amounts of work to provide value added approaches including alternative billing arrangements, project budgets and discounts for high value or volume work. Particularly helpful are quality, tailored, in-house presentations on legal developments of interest to the legal department and their business counterparts alike.

Conclusion

An in-house team that wants to get meaningfully involved in general commercial discussions and decisions may need to take control of its own destiny. It is helpful to take steps similar to steps outlined in this article to market the legal department and to earn the trust of business colleagues.

Being useful to business colleagues by showing them how to look good in front of senior management and the board of directors earns loyalty and respect. The more this happens the less likely that legal will be isolated and left outside of critical discussions. In today's increasing complex legal and commercial environment a more balkanized, siloed approach presents both needless and avoidable risks. **ACC**

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Establishing the In-house Law Department: A Guide for an Organization's First General Counsel (Jul. 2012) www.acc.com/establishing-the-in-house-department

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Seven Ways for New In-house Counsel to Start Off on the Right Foot (Nov. 2013) www.acc.com/start-off-on-the-right-foot

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ACC's CLO THINKTANK EXECUTIVE REPORT

“NAVIGATING THE COMPLEXITIES OF C-SUITE RELATIONSHIPS”

This Executive Report provides an overview of discussion results from ACC's CLO ThinkTank session titled “Navigating the Complexities of C-Suite Relationships” held in San Diego on October 23, 2006. ACC's CLO ThinkTank sessions are designed to provide a forum for CLOs who wish to exert greater leadership in their companies, at the bar, in the courts, and in the halls of government on emerging issues of greatest concern. Following is summary information on key topics and takeaways, discussion point highlights, and follow-up initiatives identified by these CLO thought leaders.

ThinkTank participants included the following legal leaders:

- N. Cornell Boggs III, Chief Legal Officer & Group Vice President, Public Affairs, Coors Brewing Company
- Diedra Gold, Executive Vice President and General Counsel, Wolters Kluwer North America
- Patricia Hatler, Executive Vice President, Chief Legal and Governance Officer, Nationwide Mutual Insurance Company
- Scott Hochfelder, General Counsel & Secretary, KB Toys, Inc.
- Christopher Mansfield, Senior Vice President and General Counsel, Liberty Mutual
- Michael Roster, Executive Vice President and General Counsel, Golden West Financial
- Gloria Santona – Executive Vice President, General Counsel & Secretary, McDonald's Corporation

KEY TOPICS

Below is a list of key topics selected by the CLOs present as most interesting and discussed during this CLO ThinkTank session:

- **Compliance - organization and process**
- **Relationships with Outside Auditors**
- **Law Department Metrics**
- **Investigations**
- **Changing Skill Sets for Experienced Lawyers**
- **Managing Secrets**
- **Business Information- electronic communications**

KEY TAKEAWAYS

Thought leaders participating in this session described a number of ideas and practices. Listed below are some top themes and takeaways. Ideas on additional issues are described in the Discussion Highlights section below, and thoughts on action items are summarized in the final section on Conclusions & Proposed Action Items.

- **Compliance responsibilities and processes are of great interest.** Having the right ‘tone-at-the-top’ is a key factor for successful compliance programs. The CLO’s role (and the law department’s role) is changing, and the CLO faces challenges in both helping the CEO or CCO practically cement the organizational commitment, and also in navigating organizational interests of other functions in increasingly becoming involved in compliance and the Board’s role.
- **Managing secrets and disclosure decisions present challenges.** CLOs receive sensitive information from various senior officers and staff in connection with requests for legal guidance, sometimes with a corresponding request to keep the information secret from other company executives for at least a short while (perhaps because the information is still preliminary, or sometimes because an executive may be a potential target of an allegation). CLOs need to navigate the complexities of these situations and bring judgment to bear on whether, when and how disclosure is most appropriate.
- **Outside auditors are asking for more information, a seat at the Boardroom table, and a role in performing internal investigations, creating tensions when companies want to preserve privilege protections.** CLOs can play a key role in negotiating workable engagement letters and defining the parameters of communications that will enable auditors to obtain information they’re interested in while also preserving privilege protections.
- **Skill sets and the landscape of in-house practice are changing.** Lawyers now need business and technology skills in today’s corporate environment. In addition, lawyers must manage their careers and measure their law department’s performance. Practices for assessing and enhancing skills, including leadership skills are of increasing importance.

DISCUSSION HIGHLIGHTS

COMPLIANCE

Compliance/ Organizational Issues: Participants described various constituencies within an organization that want to have a seat at the table and lead on compliance. They also discussed how Sarbanes-Oxley has impacted the roles that different functional groups perform with regard to compliance. Key aspects of successful compliance programs include having the right ‘tone at the top,’ a CEO who is well-grounded and who communicates the importance of focusing on compliance, and having the right people in compliance roles.

Compliance/Internal Audit: Internal audit functions demonstrate an increasing desire to be more involved in day-to-day compliance issues. Some participants note that internal audit functions help with internal investigations of compliance issues. When internal audit is involved, the outside auditors often also want to be involved, which creates tension when the CLO doesn’t believe that it is necessary to have external auditors on the internal investigations team.

Compliance/Corporate Policies: Participants described various practices for making corporate policies available. One model includes having corporate policies translated to a broad range of languages, and having online courses for key compliance program areas. The courses include a ‘quiz’ to demonstrate the course has been taken. Another participant described having a Business Integrity Office as a portal/central point of entry for locating information on corporate compliance policies. Another participant described having all of the corporate policies in the company’s Employee Manual. The manual is electronic and is available online and is searchable. Participants noted the Ben & Jerry’s ombuds program model, which includes having the policies be employee-oriented, succinct, and readable.

Compliance/Challenges with Growth by Acquisition: When companies grow through acquisition, blending cultures and compliance policies and programs is a challenge.

Compliance/ CLO as CCO: Participants discussed the merits of having the CLO also serve as the Chief Compliance Officer, or of having the compliance function report to the CLO. One participant shares that the compliance function intentionally does not report to the CLO as a way to preserve privilege and maintain the compliance function as an independent function, but with a close and harmonious working relationship between the CLO and CCO and their staffs. That company has implemented practices that include having a monthly conference call among lawyers and compliance personnel to discuss compliance issues or concerns, and the relationship is described as collaborative and one where the compliance function also comes to the law department for legal advice.

Compliance/ Reporting Matters to the Audit Committee: Participants discussed challenges of making decisions on what to report to the audit committee when the matters aren’t traditional financial or internal controls matters. One CLO described a practice whereby the company’s Chief Compliance Officer reports to the audit committee at every meeting, mostly in open session, but with a short executive session at the end in the same fashion there are executive sessions at the end with internal and external audit and periodically with the CLO. Another participant described a practice where both the CCO and CLO meet with the audit committee. Participants agree that judgment plays a big role. Some also described reporting more, but highlighting fewer. Participants described an ongoing dialogue with the audit committee and what they want to see, and the challenges associated with determining whether to take an issue to the audit committee or to the full Board. Litmus tests described by some include: ‘Knowing everything you know, what should I ask you,’ or ‘If we operate on the assumption that there will be no surprises: what has the potential to carry such reputational exposure or risk that we would feel really uncomfortable 6 months from now if we didn’t know.’

Compliance/After Action Reviews: Participants described this as a possible best practice. One participant notes performing these as a matter of routine for lessons learned for employment litigation, privacy & security, catastrophe issues, and mergers and acquisitions activity. That participant described a 6-12-18 month review of what might have been done differently and an evaluation of assumptions vs how things play out. Another participant described these as a critical cross-check for environmental, health and safety matters.

Compliance/Human Resources & Expanding Role: Participants described the expanding role of Human Resources professionals and interests in maintaining appropriate balance. There is a sentiment that HR professionals want to be involved in more compliance-related issues because they feel they have a company-wide view and can help ensure equities in employee outcomes. The challenge relates to the organizational need or interest in involving HR in these areas.

Participants discussed reporting relationships between legal and HR, and one CLO notes having the HR department report to legal.

RELATIONSHIPS WITH OUTSIDE AUDITORS

Relationships with Outside Auditors/Scope of Role: Increasingly, outside auditors want to have more prominent roles. Participants described a desire on the part of outside auditors to be part of the internal investigations team when internal audit is also part of the team.

Relationships with Outside Auditors/ Preserving Privilege: Participants described an interest in preserving privilege protections and discussed strategies to help preserve privilege, including presenting information to the Board during meetings where the outside auditors aren't present (e.g., during full meeting of the Board rather than during the audit committee meeting, or a portion of the audit committee meeting where the outside auditors are not present). Participants note that matters change on a daily basis, and there is a need for judgment about the appropriate timing for raising issues with auditors. A practice discussed regarding investigations includes telling auditors that the investigation is taking place and stating that the CLO (or senior lawyer working on the investigation) will speak with the auditors but may not be able to share everything because the company wants to preserve privilege.

Relationships with Outside Auditors/Engagement Letters: Participants discussed recent trends in 'far-reaching' engagement letters and the need to speak with lawyers for the auditors to obtain appropriate language changes. They note that who you speak with makes a difference in results, as does the negotiating power of the client company.

Relationships with Outside Auditors/Setting Reserves: Who has the final say in setting outside reserves—the Controller or the CLO? Participants discussed practices of having the CLO make recommendations and the finance group decides; if the CLO thinks the reserve is foolish, then additional discussions.

Relationships with Outside Auditors/ Access to Investigation Reports: One participant notes a situation where an outside auditor refused to give an opinion without seeing the investigation report.

INVESTIGATIONS

Investigations/ Costs: Participants discussed what function pays the costs of conducting an investigation and how this impacts that function's desire to control the parameters of the investigation. They note that some business units feel that if they pay the costs they should control the parameters and this creates a 'push-and-pull' with the legal function. One participant described a model where the law department pays the bills and then bills back to the business unit the cost of the investigation. Participants also described costs for legal services, including a model of having the legal and compliance costs billed to the business units up front so that these costs are embedded within the business unit's budget and performance measures.

METRICS

Metrics/ Measures for the Law Department: Participants discussed the following law department metrics as possible measures: volume of activity, lawyer time, legal spend, in-house counsel cost vs outside counsel cost (salary/1800 hours)

Metrics/ Timekeeping: One participant notes that everyone in the law department keeps time and charges time back to business codes. Other participants described not keeping time.

Metrics/ Organizational Study: One participant described undertaking an organizational study using an outside consultant to take a snapshot of what the law department has in terms of staffing and expertise, and of what client expectations are. As part of the study, the consultant will help provide outside comparative data. The overall study will be used so that the CLO can meet with the CEO to determine whether additional staffing is necessary.

Metrics/Legal Spend: One participant noted an article that mentioned a metric involving legal spend as a percentage of revenue. The participant notes that the article's author concluded that consensus-building organizations have much higher legal costs; whereas, company's ruled with an iron hand have significantly lower legal costs.

Metrics/Client Meetings: One participant described a practice that includes meeting with clients 3-4 times per year to discuss what the law department is doing, who is doing it, and how much time is spent on work for that client group. The benefits include an enhanced understanding of legal costs and help show the client what they need to pay for legal services. The CLO described this practice as also creating a framework within which the law department can have meaningful business conversations with clients about their legal services.

Metrics/Quarterly Statements: Another practice for providing clients with information on legal services and costs involves sending 'quarterly bank statements' that show what the client is paying and how the money is allocated. This practice helped the clients get good at using legal services.

Metrics/Challenges of Charging Legal Services to Clients: A challenge exists in wanting to encourage the right work. Law departments want to encourage clients to come with legal issues for help, but also want to ensure that the work coming to the law department is appropriate.

CHANGING SKILL SETS FOR LAWYERS

Changing Skill Sets/Training: Participants described the challenges associated with the changing set of skills needed for in-house lawyers in today's legal practice, and ways to help address this—particularly for experienced lawyers. They discussed whether legal education matches the demands of the profession. Ideas for practical business and skills training include: strategic thinking, financial skills, communications skills for experienced senior-level lawyers, teaching lawyers how to use excel and powerpoint.

Changing Skill Sets/Law Department Meetings: Participants discussed practices for providing education to their law departments. One CLO described a law summit that includes presentations from the business divisions and mini boot camp seminars, as well as a 1.5-hour teaser on communications styles. Another CLO described having off-site meetings that include the lawyers, paralegals and administrative assistants, and remarks that many of the great ideas that emerged from the off-sites were those of administrative assistants who had a 'break-through' in comfort level on communications at around the 2 or 3-day mark.

Changing Skill Sets/ Professional Development: Old view was that if a lawyer 'checked-the-boxes' with regard to traditional expectations, then that lawyer would get promoted. The new view is that lawyers are responsible for their own careers. CLOs discussed access as a critical skill, and the importance of publicizing achievements. They also note that the legal leaders who are most respected on the business side are those who acknowledge that the world is changing.

Changing Skill Sets/Testing: CLOs discussed various practices implemented within their companies to test personality, business acumen, affinity for team dynamics, etc.. One CLO

described a 1.5 to 3-day test that includes interviews and measures personality and business acumen. The test is performed for those being considered for hire at the Senior Vice President level and above. Information is shared with the executive making the hiring decision and the human resources executive. Another CLO described having participated in caliper testing to measure how the CLO fit with other C-Suite executives. Another CLO described participating in role-playing where the lawyer plays the role of a sales executive or operational leader and vice versa to experience the challenges of the issues everyone faces.

MANAGING SECRETS

Managing Secrets/CLO Challenges: Participants described challenges associated with being the senior legal advisor and receiving information that various executives ask them to keep in confidence. Situation might involve a meeting with a senior executive who comes to the CLO for guidance and asks for help working the situation out and also asks the CLO not to tell the CEO while the situation is being still in the early evaluation stages. Notion that the CLO doesn't want tattle-tail, but may also need to raise the issue to the next level if personal judgment is that the issue should be elevated. Also a concern that promising to keep something secret suggests that the relationship with that person is superior to the relationship the CLO has with the client (to which the CLO owes her duties); it also makes the CLO complicit if there's a problem in the future. One idea is to give the business leader some clear time limits: "assuming nothing material happens sooner, let's agree you'll get this to CEO at your scheduled meeting later this week, but if that doesn't happen for any reason, I'll have to take it up."

Managing Secrets/ Assertions Regarding Executives: If there is an assertion that the CEO is doing something questionable what should a CLO do and whom should the CLO tell, and when? Participants discussed the view of telling the Chair of the Board and the Chair of the Audit Committee, and deciding when to tell the CEO and making a record of doing the right thing. This process could include a general up front education of the CEO that if these types of allegations come up, here is our process. Concerns were expressed that if the audit committee is solicited, then the audit committee will want input on the investigation plan. Challenge is at what point in the investigation do you disclose the allegation to the CEO and that he/she is the target? Concern is in maintaining process that doesn't include any appearance of the opportunity to influence the investigation. Practices can vary, and views range from telling the target sooner and clearly communicating that they cannot influence the investigation to beginning the investigation and then telling the target once farther into the process. Pros and cons for both discussed. Concern with not telling until later is that the investigation can get locked into a path without the benefit of important information from the target. There are also issues of fairness and impartiality. Participants discussed the importance of quickly coordinating with IT to impose document preservation procedures and preserve files.

BUSINESS INFORMATION

Business Information/Email protocols: Participants described challenges associated with emails—how long to retain them and who decides retention strategies. One model is to have a records retention group and office of compliance on point for developing policies. Although it might be an individual decision to determine what is a 'business record,' once the decision is made then the records retention policies apply. Participants discussed the challenges with developing and maintaining records retention policies and electronic information. They note the benefits of educating on the front-end of the need to be responsible when creating electronic documents and of having rules that allow the company to look at email. Participants discussed merits of web-based courses on records retention.

Business Information/ Text Messaging: Participants discussed text messaging and the challenges associated with Blackberries and hand-helds during business or Board meetings. CLOs discussed hearing about Board members who were text messaging their own outside counsel during Board meetings to obtain real-time legal guidance from outside counsel on matters being discussed by the Board. One CLO notes a corporate policy of no text messaging. Another notes Blackberry etiquette for the Board, describing a situation at one company where a Board member said he/she would leave the meeting if others kept using Blackberries or similar devices during Board meetings. All acknowledged the conflicting difficulties of holding board members' undivided attention, and yet discouraging them from confiding about the board's confidential and emerging business issues with outsiders (waiver and disclosure).

CONCLUSION & PROPOSED ACTION ITEMS

The session ended with the CLOs sharing ideas on possible tools or action items, including:

- **Etiquette for Board Members:** develop 1-pagers with tips on Board member etiquette during Board meetings; could have separate 1-pagers for meetings via phone and in person.
- **Encourage Business Leaders to Speak on Benefits of Compliance:** consider providing forum for business leaders to help them understand how to better convey the message that compliance is important and that there are practical approaches to address the issues.
- **White Paper on Auditor Engagement Letters:** evaluate key issues that are problematic and share ways to resolve them, including practical tips for interacting with auditors.

D. Coaching vs. Mentoring Roles/Responsibilities

Coaching Role

The coach's role is to work with the coachee in a non-directive manner to achieve a specific result or outcome. While there is a specific outcome in mind (e.g., behavioral change, performance improvement, etc.), the coach facilitates the coachee's development and achievement of desired result without telling the coachee what to do or how to do it.

Coaching Responsibilities

- Establish the desired outcome or result at the outset;
- Focus on building trust with coachee;
- Meet with the coachee on a regular, periodic basis for a fixed period of time;
- Utilize a non-directive style by asking probing questions to help the coachee consider the career issues they are facing in a new way;
- Maintain complete confidentiality about anything discussed during coaching sessions; and
- Work with the coachee to determine practical ways to apply the learning or progress achieved during coaching sessions.

Mentoring Role

The mentor's role is to provide ongoing career guidance and advice to the individual they are mentoring in both formal and informal ways. The mentor serves as a sounding board for issues or challenges that the individual is facing and provides wisdom and guidance as someone who has "been there" previously without a specific outcome or result in mind.

Mentoring Responsibilities

- Provide formal and informal guidance;
- Give advice and/or wisdom about how to handle specific situations or challenges;
- Discuss career goals and strategies for achieving them;
- Talk about both the "written" and "unwritten" norms in the organization;
- Speak from personal experience;
- Focus on holistic career development for the individual; and
- Build trust and maintain confidentiality.