

Session 408

Creating a Team of Strategic Thinkers

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Definitions of Strategy

Scholars and business people have proposed a variety of definitions of strategic thinking, including: the ability to define and create purpose and models, the ability to go from chaos to concept, and an understanding of knowledge creation. Here is a small sample:

Strategic Planning: process of determining the major objectives of an organization and then choosing the course of action and allocating the resources necessary to achieve those objectives.

Tactical Planning: the process of translating broad strategic goals and plans into specific goals and plans that are relevant to a single component of the organization, such as a functional area like human resources, marketing or law.

From M.I.T.: Strategic thinkers are systems thinkers. Systems thinking is a discipline for seeing wholes, Peter Senge defines it this way as a framework for seeing interrelationships rather than things, for seeing patterns of change rather than static snapshots. It is a set of general principles--distilled over the course of the twentieth century, spanning fields as diverse as the physical and social sciences, engineering, and management. It is a shift of mind from seeing parts to seeing wholes, from seeing people as helpless reactors to seeing them as active participants in shaping their reality, from reacting to the present to creating the future.

Peter M. Senge, The Fifth Discipline:[Strategic thinking is] needed more than ever because we are becoming overwhelmed by complexity (the capacity to create more information than anyone can absorb, foster greater interdependency than anyone can manage and accelerate change far faster than anyone's ability to keep pace). (New York; Doubleday, 1990), p.69, and 73.

Peter F. Drucker, One of the toughest problems [we face in business] is to ensure the supply, preparation and testing of top management people. This is, of course, an old and central dilemma as well as a major reason for the general acceptance of decentralization in large businesses in the last 40 years. But the old organization had a great many management positions to prepare and test a person. Harvard Business Review on Knowledge Management (Harvard Business School Press 1998) p. 16.

Ikuhiro Nonaka: The ability to move from metaphor to model... To convert tacit knowledge into explicit knowledge means finding a way to express the inexpressible. Unfortunately, one of the most powerful management tools for doing so is also among the most frequently overlooked: the store of figurative language and symbolism that managers can draw from to articulate their intuitions and insights. Understanding knowledge creation as a process of making tacit knowledge explicit--a matter of metaphors, analogies, and models--has direct implications for how a company designs its organization and defines managerial roles and responsibilities within it--the structures and practices that translate a company's vision into innovative technologies and products Harvard Business Review, The Knowledge-Creating Company (Harvard Business School Press 1991) p.14.

Joe Jaworski: A fundamental shift arising as leaders come to understand that the process of strategy is not just about ideas but about releasing energy. The key is the willingness to see yourself, even your enterprise, as part of larger forces that can shape new realities. When [CEO] Ray Anderson says, "I have asked my people to join with me in leading the second industrial revolution because the first is not sustainable," he is seeking to harness such forces--through infusing strategy with a deep sense of purposefulness., Royal/Dutch Shell, The Dance of Change (Doubleday 1999) p.492.

Sun-tzu (4th cent. BC) Chinese military strategist All men can see these tactics whereby I conquer, but what none can see is the strategy out of which the victory is evolved.

General Robert E. Wood (1879-1969) : Business is like war in one respect. If its grand strategy is correct, any number of tactical errors can be made and yet the enterprise proves successful

People who are into tactics are defining their future by the past. "They are forced to build their future on the foundation of the projections of the past rather than on a clear definition of what they want their organization to be.

Benjamin Tregoe and John W. Zimmerman: Using this approach, the plans which companies make determine their direction rather than a clear sense of direction determining their plan." Top Management Strategy: What it is and How to make it work (Simon & Schuster).

"Always remember that this whole thing was started by a mouse." Walt Disney

Wanted: General Counsel

A Good Manager--With Legal Expertise

**Must have good communication/
managerial skills. Business sense a
must. Will be amply compensated with
\$\$\$/stocks. An EEO employer.**

By Lee Hanson

Without a doubt, the position of general counsel of a corporation is one of the most coveted jobs in law today. Pay and prestige—and freedom from always seeking new business—are the reasons why. The job used to be considered a not-very-interesting position where the main function was to serve as a conduit to outside counsel, who did the real lawyering. Not so anymore.

Global expansion, alliances, mergers and acquisitions, intellectual property, antitrust, liability, and crisis management are just a few of the issues facing the general counsel every day. Day-to-day responsibilities include contracts, leases, government regulations—all have tremendous impact on an organization's operations and bottom line and make the general counsel a major player in a corporation's direction and ultimate success. This executive is now part of the offense, not just a technical defense mechanism or a reactionary control.

Finding the ideal candidate for the position for a variety of companies ranging from small technology start-ups to global industrial and service corporations, we can generalize on what corporations are looking for a new general counsel. And the factors deemed critical to success are ones not previously associated with most attorneys.

The ideal general counsel is a business partner with the CEO, an executive with legal expertise. This individual must have a broad business perspective and thorough understanding of the effects legal recommendations and actions will have on reaching company goals and its bottom line. Chief executives and senior management want an individual who consults with them about legal issues, positions options in a business context, and implements appropriate action.

Additionally, they seek an individual who is open to discussion, listens to what the desired outcomes are, and works proactively to achieve business goals.

Top management wants a team player with a shared vision, a professional who can use technical expertise to facilitate corporate programs, not be perceived as an impediment to progress.

A general counsel's business acumen will be evaluated critically in the boardroom, where she often serves as corporate secretary. Traditionally, the corporate secretary handled the nuts and bolts of conducting board and committee meetings.

Today's general counsel/corporate secretary is looked upon as an in-house catalyst for change, the individual who keeps the board informed of trends and helps it make decisions. Acting as a liaison between directors and management, structuring effective committees, planning for director and top management succession, evaluating individual directors and the board's performance are several key areas where the general counsel as corporate secretary exercises great influence—if she commands the respect and confidence of peers on the board and senior management.

As liaison between the board and senior management, a general counsel has the perfect opportunity to gain the confidence and respect of this group by demonstrating her business savvy, knowledge, and global perspective. The boardroom and committee work are ideal forums to showcase the general counsel's problem-solving abilities, dispelling the perception that attorneys only give a "yes" or "no" response.

But the ability to say no when necessary is essential. However, it must be done in a persuasive, non-confrontational manner, often a test of the general counsel's communication skills and leadership ability. Neither the CEO nor board will respond positively to an autocratic manner.

To fill the desired place in the senior management team, the general counsel's legal expertise and reputation must be outstanding. She will be involved with all high profile cases involving the company as well as all legal issues that have a significant impact on the corporation.

Additionally, general counsels are finding themselves in the public eye more frequently. This executive is acting as spokesperson for the corporation in lawsuits, major transactions such as acquisitions and mergers, and in crisis situations.

With the increased demands on the general counsel, she must be able to delegate when appropriate. While undertaking a lead role in major cases is expected, this executive cannot do it all. She must draw on proven management skills so that the legal team's time—including that of the general counsel—is used in the most productive and cost-effective way.

Most often, the general counsel's management skills determine success in this newly expanded strategic role. Peers expect general counsels to be effective managers. They are to lead the internal staff and develop them into a crack team, one that understands corporate goals and works with others in the organization to attain them. Proactivity in the legal department—reaching out to the business managers with ideas rather than waiting for the phones to ring—is now a highly valued and expected trait.

Rather than continuing to operate in a relatively insulated environment with little exposure to the business, the internal team is expected to collaborate with management and professionals from other areas in the company. They can no longer work only on projects and report outcomes; they must involve themselves in the business and use their legal expertise to help colleagues make good decisions.

To achieve this, general counsels need to take an active role in recruitment, training, and evaluations of the internal legal staff. This knowledge will help the general counsel make the best use of the internal staff's time and talents and, when necessary, quickly and confidently, use outside counsel.

The relationship with outside counsel also requires deft management. While the board and senior team recognize the need for external legal assistance, the general counsel is expected to keep budgets in line and manage relationships so that the corporation receives the greatest return on its investment.

What are corporations looking for?

A strategic thinker with outstanding leadership, management, and legal abilities who acts both as a business and legal advisor to board members and the senior executive team, drawing on impeccable communication, persuasion, and "people" skills, acting as an enabler or obstacle as appropriate to the situation. Only a small pool of qualified individuals to fill this expanded general counsel role exists.

Demand for this new type of general counsel has accelerated in recent years. Large corporations often find that the current general counsel does not have the attributes to fill the role. Newly formed companies, such as IPOs and those borne of spin-offs, understand the value of having a proactive general counsel in-house early to meet the myriad challenges of emerging public companies. They are creating and staffing the role at a much earlier point than before.

Mobility at the top echelons of corporate America also influences the demand for general counsel. A chief executive assuming leadership at a new company often will staff the general counsel role with an individual with whom he had worked closely in the past. Internal promotion or hiring from law firms that the corporation worked with previously used to be the main method of filling the general counsel position. Today, however, more chief executives are turning to search firms.

The first avenue of choice in seeking to fill a general counsel position from the outside is to attract a general counsel from another independent company. CEOs take comfort in the fact that these individuals are proven commodities in their own organizations and will have had substantial interaction with the executive management team and the board.

As a second priority, CEOs are often willing to consider deputy general counsels or a general counsel of a division. There is occasionally a discomfort with the fact that these individuals do not have ultimate legal responsibility within their own organizations and will have had significantly less interaction with the CEO, the board, and the rest of the executive team.

However, if the company is of sufficient size, the role of deputy is likely to be quite broad, often serving as the key manager of the legal department and assuming a de facto general counsel role when the top legal executive is consumed with a crisis such as a major piece of litigation or acquisition. Many of these deputies are truly ready for the top legal job but are blocked in their own organizations due to a well-entrenched and well-regarded incumbent. Consideration of attorneys in private practice is generally a lower-ranked priority due to the CEO's concern about their lack of experience both in management and in functioning in a corporate environment. Top executive recruiters often hear

expressed the concern that private practitioners are excellent "lawyers' lawyers," but what is really needed in the general counsel role is a "businessman's lawyer."

However, the transition from private practice to a general counsel role is certainly possible, and these moves are made on a regular basis, often at significant companies. Typically this occurs when there is a personal familiarity with the outside counsel, who may have worked closely with the CEO or the board on a major transaction or has served for a number of years as a key outside advisor. In many situations, outside counsel has regular interaction with the CEO and board, explaining to and guiding them through complicated legal processes that take months or years to complete.

Without familiarity with the individual, what must a lawyer in private practice do to convince a company of her effectiveness in a general counsel role? First, demonstration of successful management experience is key. Management of an office or practice or service on the firm's executive committee will be favorably viewed, particularly if there has been true budget and profitability accountability.

Second, references from CEOs of major clients will be important in validating the lawyer's excellent business judgment and contributions in providing cogent advice in difficult situations. Third, assessment of the individual's ability to act as a team player, mentor, and manager will be critical in overcoming the presumption that an in-house lawyer will be better suited to the position than one in private practice.

However, the reservations expressed by CEOs are a reality of operating in a competitive, global business environment. Top management recognizes and respects the technical abilities of private practice attorneys. With exposure to the proper situations to gain the necessary experience and demonstrate one's abilities, law firm partners would be strong candidates for the position of general counsel.

Whether the candidates for the general counsel role come from the corporate world, private practice, or other areas such as government, academia, or the not-for-profit realm, diversity is invariably a consideration in these searches. As for all top management positions today, CEOs and boards are demanding that search firms present a diverse panel of well-qualified candidates. Executive search consultants see this issue ever more intensely in the general counsel role, as many companies are now want to fill this position with women and people of color. In

part, this is a reflection of the increasing diverse pool of lawyers, both in private practice and in the corporate setting.

As a result, sitting general counsels of major companies who are women or minorities are always on target lists for any general counsel searches in the market. As the number of these individuals is finite and fewer than the number of open positions, executive recruiters are increasingly targeting top-notch deputies or divisional general counsels who have the potential to be excellent chief legal officers. Because the deputies aren't as publicly visible and easy to identify as the chief counsel, the executive search community relies on references from law firms and general counsels themselves to create a broader database of women and minority candidates.

What issues will top-notch general counsel candidates focus on when being recruited to move to another company? Three aspects of the role repeatedly surface in conversations with candidates. Every individual wants to explore in depth the relationship with the chief executive and senior management team, the mandate of the position and its potential for growth, and the compensation package.

The reporting relationship is considered a bellwether, an indication of the future relationship with the CEO and senior management. If the candidate is to report to the CEO, candidates believe the company is serious about having the general counsel as part of the senior management team.

When the reporting relationship is to the chief administrative officer or chief financial officer, candidates are concerned about the job's potential for professional growth. Some candidates believe that this reporting relationship may be a sign of a company that does not yet realize the potential of fully leveraging its legal function. In this situation, the general counsel might have limited opportunity to interact with senior management or the board, lessening chance for advancement and to influence decisions.

In addition to the scope of the role as defined at the outset, a top-notch general counsel will also be interested in ways in which responsibilities may be broadened over time to allow professional growth and development. For individuals who have already amply demonstrated their ability to run a legal

department efficiently, a company seeking to recruit such an individual may consider broadening the scope to include real estate, purchasing, or government relations. A company seeing to keep its own highly regarded general counsel may need to widen the range of the position's responsibilities as a preemptive move to avoid losing her to a competitor.

Some general counsels also seek the opportunity to move into a business role, with operating and profit and loss responsibility. While this has been relatively infrequent in the past, executive search consultants are witnessing more of these moves today as general counsels have had more opportunity to prove their business acumen. While still quite rare, there have also been recent instances in high profile situations of general counsels moving into CEO roles.

Another issue for general counsels is compensation. They expect to be compensated at the same level and in the same manner as the rest of the senior management team. Incentive pay and stock are part of the total package.

With expanded responsibilities and stature in the executive ranks, trends show that compensation levels are increasing. A survey of more than 200 legal departments by Altman Weil Pensa, Inc. found average cash compensation for general counsels increased 29 percent from 1992 to 1997. Corporate Counsel Magazine's annual survey of general counsels at Fortune 1000 companies found 1997 median cash compensation was almost \$ 700,000. The highest earning general counsel received \$ 3.85 million in cash.

But stock options are replacing cash as the focal point of the compensation package. Market forces, notably shareholders' opinions that owning stock keeps executives focused on company performance, have made stock options a significant—almost mandatory—portion of executive compensation, including that of the senior management team. A survey of general counsels at the top 200 US companies revealed that 37 percent of their total compensation package was stock options. This study, conducted by executive compensation consulting firm Pearl Meyer & Partners, found the average value of the options granted to be \$ 580,000.

The general counsel role represents an incredible opportunity, especially for women attorneys. Trends indicate the demand for this new senior executive will continue to accelerate and statistics suggest the pool of women candidates is strong and growing. Women continue to pursue careers in law, comprising 45

percent of the total enrollment in J.D. programs during the 1997-98 academic year, according to the American Bar Association.

As to females who currently are in practice, the 1997 Statistical Abstract of the United States reports that the percent of lawyers who are female has risen dramatically, from 15.3 percent in 1983 to 29.5 percent in 1996. During this time, many probably have had many of the diverse experiences considered mandatory to be considered for the role. No doubt a significant number have been involved with legal issues having major effects on business, those which command a great deal of the general counsel's attention and superior legal skills, such as intellectual property, mergers and acquisitions, antitrust, and crisis management.

Considering the ongoing requests for qualified female candidates received by executive recruiters, this is an ideal time for women having this goal to implement a focused career plan that includes avenues to develop and demonstrate leadership and managerial skills as well as business acumen, qualifications that will distinguish them as candidates for this senior management position.

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