

The Roundtable

A Winning Team

AS ROLES AND EXPECTATIONS FOR THE LEGAL DEPARTMENT EVOLVE, GENERAL COUNSEL PREPARE FOR THE CHALLENGES NOW AND IN THE FUTURE.

● EDITED BY **AMY I. STICKEL** ●

FOR GENERAL COUNSEL AND IN-HOUSE LAWYERS, A TUG-OF-WAR has taken place in recent years over their professional obligations, their role at the company and the very nature of their jobs. They must balance different needs: providing sound legal advice versus being business partners; interpreting legal statutes while reading 10Ks; and improving the bottom line at the same time they ensure everyone at the company understands their ethical obligations.

The conflict has become part of the daily job, as in-house counsel weigh the various pressures they face from senior executives, boards of directors, shareholders, the government and regulators.

Corporations expect far more than mere legal work—for that, they can hire an outside law firm. They expect their attorneys to partner with the businesspeople, understand how the organization operates and be able to read a balance sheet. “CEOs clearly appreciate lawyers who are willing to take some risks and, most importantly, find ways to accomplish the business goals,” says Mike Evers, president of Evers Legal Search.

At the same time, the government and regulators have

made it clear they expect general counsel to serve as the ethical voice at the company—the key member of senior management who ensures the long-term interests of shareholders are being considered.

To handle this conflict, in-house legal departments have revamped the way they oversee compliance, interact with businesspeople, keep their skill sets fresh and even how they receive compensation.

And if anything, the world will continue to grow more, not less, complicated. To prepare for this, legal departments are re-evaluating how to attract the attorneys they will need to operate effectively. They are explaining the benefits of life in-house, both professionally and financially, to law firm lawyers. They are continuing the ongoing challenge to improve diversity. And some are even building or expanding pro bono efforts, in a bid to allow their attorneys to perform public service while in the corporate realm.

With Evers as moderator, a group of general counsel recently gathered to discuss the challenges they deal with every day, and how they are preparing their legal departments and companies for the future.

Create the Environment

MIKE EVERS: How do you create an environment that encourages your lawyers to embrace new initiatives and take risks?

MARC FIRESTONE: You not only need to tell your people they have the authority to take risks and contribute to the department, but that you expect them to. We constantly emphasize that being an excellent lawyer is the baseline standard, but Kraft never made money thinking great legal thoughts regarding cheese and cereal. It's our job to support the business, and we seek opportunities to recognize and reward people who contribute on the business side.

WILLIAM VON HOENE: We customize key performance indicators for each of our attorneys. We do it annually and check on how they are doing on a semi-annual basis. We try to build in criteria other than simply being a good lawyer and achieving value for the company. We pay a lot of attention to that, as opposed to doing a cosmetic exercise. Compensation and status within the legal department are certainly influenced by how well they meet the criteria that have been established and agreed to in advance of any given year.

SUSAN LICHTENSTEIN: I am fond of telling my folks nobody cares about a legal problem except as a business prob-



lem. In addition to our official reward programs, we have instituted law department awards that are presented once a year at our global legal conference. People can nominate either individuals or teams.

The GC Role

EVERS: Whether it's Ann Baskin pleading the 5th Amendment or the option back-dating fall out, the GC chair looks more and more like the hot seat.

KENNETH HANDAL: It's evidence of a change in the role of the general counsel that has taken place over the last several years. There seems to be so many more situations where lawyers are in the cross-hairs and not making the right judgments about what to do.

At my company, my predecessor pleaded guilty to obstruction of justice. Now compliance is a big part of my job. It's all about the tone at the top. We've had to work hard with other senior management to communicate the idea that every employee needs to be an ethical leader and show ethical behavior as part of the daily business life.

ALEX GREEN: The role of a private-company GC has changed as well. It is a bit easier because I don't have to deal with many of these issues on a day-to-day basis. But you need to keep up to speed on these issues, because if you're not public now you may become public.

CORNELL BOGGS: It seems that the legal department, legal functioning and legal issues are far more integral to the operations of how the company oper-

ates. Five years ago you did not have your CEO and CFO accepting personal liability on the financials. Legal can no longer just be an interpreter or facilitator carrying out whatever business decision has been made.

FIRESTONE: The idea is not to be an on-site law firm. The idea is to use our unique skills as lawyers to contribute to the business. It's important that we look for people who have judgment, common sense and courage.

VON HOENE: We as general counsel and the people who work for us need to have literacy in new areas, and we can't afford to have compliance be an extra piece that we delegate. It is a much more demanding position than it was in most places historically.

FIRESTONE: Especially if you're trying to reconcile that to our role of being business partners. There are, at least on the surface, conflicting expectations between being a business partner and being a counselor to the corporation in the face of controversy. Sometimes it requires courage to have an objective assessment and advise accordingly. It can also be difficult for the general counsel to make a wise decision about the best long-term benefit to shareholders.

LICHTENSTEIN: An interesting dynamic has been created by the tension between the two roles. It's clear that the government views the general counsel as the fiduciary guardian of the company. I find myself thinking about the kid we all loved to hate in

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grade school, the teacher's pet who was always saying, "Oh no, we better not do that or we'll get in trouble." How much did you like that kid?

Being that kind of voice will get you marginalized if that's all that comes out of your mouth. You can't protect the company if you're marginalized. We all have to sell our advice, no matter what kind of law you practice.

BOGGS: It goes without saying that it's difficult to be in a legal department if

you don't understand the business. Young lawyers have to recognize that the core legal things they learned in law school are only part of what their job is all about. The more they know and embrace the business, the more partnership they will get with the business people.

LICHTENSTEIN: It should go without saying, but I'm amazed at how many lawyers inside and outside don't understand how their companies make

money. It goes way beyond financial literacy. It goes to commercial literacy in your industry, understanding the industry drivers and the obstacles that stand between the company and profitability every quarter.

At Baxter we did a half day of what we jokingly called Finance for Dummies. It was a course in basic financial literacy and the lawyers were eager to have it. Our chief accounting officer and a couple of others talked about how to read a balance sheet,

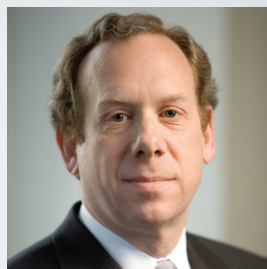
Roundtable PROFILES



N. CORNELL BOGGS III is the chief legal officer and group vice president of public affairs of Coors Brewing Co. Prior to joining Coors in 2005, Boggs was vice president and general counsel for Tyco Plastics and Adhesives.



MIKE EVERS is president of Evers Legal Search, a national executive search firm for legal departments. Previously, Evers was Midwest regional coordinator for The Wallace Law Registry and practiced employment law with Blank Rome.



MARC FIRESTONE is executive vice president, corporate & legal affairs and general counsel for Kraft Foods Inc., where he is responsible for the company's corporate affairs, legal, corporate secretary and compliance functions worldwide.



ALEX GREEN is general counsel for CareerBuilder.com, an online job site. Prior to joining CareerBuilder.com, Green was senior counsel for Household International and McDonald's Corp.



KENNETH V. HANDAL is executive vice president for governance, co-general counsel and corporate secretary of CA Inc., where he is also corporate secretary and coordinates the work of the board of directors.



SUSAN R. LICHTENSTEIN is corporate vice president and general counsel of Baxter International Inc. Prior to joining Baxter in March 2005, Lichtenstein was a partner with McDermott Will & Emery.



WILLIAM A. VON HOENE JR. is senior vice president and GC of Exelon Business Services Co., one of the largest public utilities in the country. Prior to joining Exelon in 2002, Von Hoene was a senior partner at Jenner & Block.

how what you're working on translates into share price and so on.

I recently said I would buy breakfast for anyone who showed up to listen to the earnings call because I was amazed at how many lawyers weren't listening in. I can't think of a better way to get educated about what the business' goals are near-term and long-term than listening to the quarterly earnings analyst call.

GREEN: I'm taking classes at night to get an MBA, and it's to enhance that skill set. I want to keep improving my critical thinking skills so I can think as much like the business person as possible. It gets me in closer to the business people, and it ultimately gives me a different view of the world, as opposed to just law.

Having Passion for Diversity

EVERS: According to the diversity survey in the October issue of *InsideCounsel*, departments as a whole are not meeting those objectives, at least not to the extent they would like to.

HANDAL: We have someone within the department who works on this issue and we work closely with HR in trying to transform the department into a more diverse group. We watch it all the time in our hiring practices, in our recruiting and particularly in our promotions from within.

VON HOENE: There is no magic formula and there is no substitute for passion on the subject. There are a lot of structural things we probably all do and programs we participate in to try to help meet the diversity objectives. We have an officer within the legal department whose project for the year is diversity, and we rotate that every two years. It involves attending programs, aggressive recruiting and mentoring of people within the department.

Your diversity efforts internally and what you do with your outside counsel

must complement each other. When you're trying to attract and retain diverse lawyers, they're looking to see your commitment. If you don't have a commitment on the outside, it is hard to demonstrate you have it on the inside and it's hard to reinforce it on the inside. And a lot of the lawyers we end up hiring are lawyers who have worked as part of our outside firms. If we have advanced the ball, then there are benefits associated with that.



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FIRESTONE: In the area of outside counsel, I feel a tremendous sense of personal disappointment. In 1989 I went to the ABA's minority counsel demonstration kick-off meeting. There was tremendous spirit and desire to dramatically increase the prominence of minority firms in terms of doing business with corporations. It was 17 years ago, and I have not seen many success stories. I would love to be able to say something good about what Kraft is doing for all the billions we spend on

outside counsel to support the development and growth of minority firms, but it's a continual frustration.

VON HOENE: Equally, if not more important, than the support, growth and development of minority firms is support for lawyers of color and female lawyers within majority firms. We have to find ways to do that because all too often the minority firm is a convenient way to meet a kind of cosmetic objective. At large corporations, a substantial amount of our work is not with smaller firms; we do it with larger firms.

We do a calculation each year for all our firms. We calculate the dollars that we spend with them on lawyers of color and female lawyers and we then give them a report card. We rate them in the upper third, the middle third or the lower third, so we're trying to translate our commitment into something they can understand numerically. It's not without its limitations, but the idea is to empower diverse lawyers within those law firms.

GREEN: How well have the firms received the report card?

VON HOENE: It depends on how they did on their report card. By doing it in that fashion, we've demonstrated that this is important and will be part of the evaluation process. It has had an impact on who the law firms bring to the table to represent us. Whether they're doing it begrudgingly or with enthusiasm, I don't know. But it's allowed us to communicate the message that it's important to us and that if you want to have our business, this is part of what we expect of you.

BOGGS: The business as a whole has to truly understand that having a diverse work force is a business advantage. Demographic changes and shifts are happening in our country that people should not be blinded to, because it won't be that many years until it will



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hit them in the head like a hammer. The number of Hispanics and other minorities are definitely growing at a pace far faster than the traditional majority. People in consumer products businesses and other businesses are going to have to pay attention to that.

FIRESTONE: Since we operate roughly 50 percent in the United States and 50 percent outside the United States, we’ve really been focused on moving people into and out of the United States on short- and long-term assignments, and it raises interesting challenges. You could professionalize by saying we need to acculturate Europeans to the U.S. legal system, and conversely send people here to the EU. That’s an emerging area, at least for bigger law departments, in terms of how to train, structure and accommodate moving your employees around.

The Compensation Package

EVERS: Most legal departments don’t compete with major law firms on compensation, yet many people want to go in-house, many being an understatement.

LICHTENSTEIN: Everybody always talks about how we can’t compete with the law firm compensation. Yes, we can, if you look at total compensation. Lawyers are particularly bad about talking about this. In-house salaries and benefits are better and more subsidized

by the entity. When you are a partner in a law firm, you pay that all out of your own pocket.

You have to communicate that fairly aggressively in order to cause a law firm lawyer to understand that, and you have to give them some real, concrete examples.

BOGGS: There are many life variables in in-house practice that don’t relate to money. Many people, especially at the younger lawyer level, may desire to delve back into the discipline of their undergrad. If they were an associate in a law firm they might get bounced to another task that might not have anything to do with their areas of interest. That might be something in and of itself that is very satisfying to someone besides the money that they’re getting or the core salary issues.

HANDAL: In-house work is quite a challenge and quite fun, and the opportunity to be so involved in the business with a dynamic company is really worth it.

EVERS: Can you tell us briefly a bit about how your pro bono programs may be part of attracting and retaining really excellent individuals?

HANDAL: I came here in July of ’04, we started setting up the program in October and we opened it up in December. It’s great fun for the lawyers, paralegals and assistants. We include everybody. It’s great experience, an experience they might not otherwise get. They’re doing something good and giving something back to the community while they’re doing it. It’s a big attraction.

It’s hard to develop an in-house program alone, and we work closely with outside law firms and pro bono organizations. Also we’ve gotten senior management to buy into the idea, so the lawyers and support staff don’t think that people are looking unkindly at them for doing it.

VON HOENE: It’s a tremendous happiness-maker within our department. We have a very extensive program. We have coordinators in each of the major cities in which we practice and operate. We have a website we use. We give people not only encouragement but credit for doing it. It’s an important part of our character.

We, too, found a great challenge in doing it independently and almost all of the major pro bono programs we do are in conjunction with one of the law firms that works with us. You have their capacity, so you can bring your people into pro bono projects that would be difficult to do internally. Our lawyers and the lawyers in our outside firms work more effectively because they’re doing this kind of work together, as well the business kind of work.

Last year, in Philadelphia, we registered homeless people to get birth certificates. They need birth certificates to get jobs and certain benefits and things like that. We registered 318 people in the lobby of our building. It was an unbelievably gratifying project for our lawyers but it was also a tremendous boon for our business. We got as much favorable publicity and feedback from the community for that event as we could have by holding 50 black-tie fund-raising dinners. ●