



"THE CARE AND FEEDING OF CEOs (AND GCS TOO)": REFLECTIONS OF A FORMER GENERAL COUNSEL

by DENNIS A. STUBBLEFIELD

Understanding the Role of In-House Counsel

While back at a Business Litigation Section panel on in-house counsel, Arnie Pinkston, Allergan's GC, began as follows: "What outside counsel need to understand is that I get paid to help sell Botox!" As I listened to mostly tepid, tentative laughter in the audience, I thought "a lot of us still don't 'get it.'"

I have served as in-house counsel three times including as Assistant General Counsel in a franchise system, and as GC of three stockbrokerage firms. I was hired a lawyer, and I counseled as one, but as "general" counsel I also was a shrink, a teacher, an editor, and the professor of common sense at countless meetings on countless subjects—a description that I suspect rings familiar to anyone who has sat as a frenzied trusted advisor in a GC chair. Every day was nonstop, and often chaotic, involving close personal contact with scores of people within the organization, most of them non-lawyers. It was my entire professional life at the time I was doing it: no other clients and no other jobs.

All around me was the "system and process" management culture known to most modern businesses: from "mission" and "vision" statements to strategic planning

sessions; from management training modules to company retreats with "team-building." Not to mention the weekly management meetings designed to put these nice business-school approaches into actual practice. And all of this—with endless email chains, clogged voicemail inboxes, and commitments that had to be rolled over day after day (including approving overdue outside counsel invoices)—all of this often seemed to come well before the luxury of quiet reflection for a few hours, like I could often do in private practice, on the best way to solve a tricky legal problem. Yet, for many if not most of us who have been there, it was the time of our lives, a total blast, and a sense, every week, that we were a pretty important part of building something long-term, and even seemingly close to being business-side leaders.

However, we were always reminded that Legal is not on the business side: its function is merely a means to an end, and it is fundamentally a "cost center." So, there was always downward pressure on our budgets and the recognition that, generally, the more we spent, the less the company earned. Our organizational existence was as lawyers, yet we rarely had enough time to do anything close to elegant lawyering. No wonder we were often "tough customers" for our outside counsel, and, sometimes, fairly impatient and unforgiving with those who "didn't get it."

Last fall, as I was pondering these issues, I decided to take a shot at explaining the needs of an in-house counsel with a top-flight panel. The result was our seminar on May 15 at the Dale E. Fowler School of Law at Chapman University. The panel consisted of two top GCs, Michael Baroni and Ashley Good; outside counsel Mark Peterson, who had served as GC of several local companies; and Lucy Dunn, who has served as a lawyer, a senior California government official, and is currently the CEO of the Orange County Business Council; Wayne Gross, former BigLaw partner who recently founded his own firm; and I, a solo practitioner until recently, co-moderated this program. Solo/Small Firm board member Peggy Hughes introduced the panel and noted that this practice-focused Section serves in large part to replicate for its members the mentoring and collegiality that is usually self-contained within large law firms. In the next section, I highlight the main takeaways from the panel and my related observations. "GC" herein is shorthand for whichever lawyer is your point person within your client's legal department.

Takeaways and Lessons

Much of the Panel's guidance can be understood by recalling a few phrases which most of us learned as children: good manners, common sense, and the Golden

Rule. Specifically:

Make the GC Look Good and Make Her Life Easier. Excellent lawyering is only the start. Seek to understand how hectic life is inside, and stay several steps ahead of your client's wants and needs. Be proactive and creative in solving not only what you are asked to solve, but in identifying ancillary issues that may be missed by a harried GC. Clarify up front what format is best for the work product ("deliverable" in management-speak) which you are paid for (A short and sweet "bullet point piece" which the GC can cut and paste and make her own? Or, a slightly longer piece with the imprimatur of your firm's name as clout for her CEO? She will probably *not* need a ten-page memo with twenty-seven footnotes, and often less is more with oral advice, particularly when various adverse interests may be lying in wait). Offer to "back up" the GC with the CEO on tricky issues where the GC may need some support. Pay attention to the "little things" like always being early for appointments, never letting key communications go stale, and keeping the GC's staff happy. As Mark Peterson said, "always remember that the GC's entire life is the company, while you, as outside counsel, get to go on to other clients and projects."

Take a Stand: Make a Recommendation. Ashley Good pointed out, and the panel concurred, that GCs want to hear clear recommendations, not just agnostic evaluations of various options.

Good Value More Than Low Price. Price matters, particularly with protracted components such as discovery in litigation and due diligence in transactions. But the panel concurred that most GCs are *not* "Wal-Mart Buyers;" they want good, overall value and are willing to pay premium rates for specialized, non-commoditized advice and counsel.

Big Bills and Bad News. Here, outside counsel need to keep two things in mind: First, be the first to deliver the bad news; never let your GC hear it through the grapevine. Second, be candid and direct as to why the something bad happened, and, importantly, if it was caused by an inefficiency or mistake on your part, own up right away and assure your client that the problem has been fixed for good.

Always Look Long Term. Opportunities will always present themselves to add value and create goodwill. For example, during a protracted matter involving both civil litigation and regulatory investigation, counsel can make helpful compliance-oriented suggestions mid-stream. Similar benefits can be conferred by providing training sessions for various client employees.

A classic example in litigation is the (often) complementary "post-mortem" session with the GC and key business people to bat around the lessons learned from the engagement. All of these things can make your GC's life easier and may yield benefits to your firm. On the core assignment, make it a point to never bill for every single "point one" of an hour!

Communication: Make It Count. Even before content, it is necessary to think through the most effective *means of delivery*. You sometimes need to play an ad hoc chief of staff/personal assistant role so as to not work at odds with the lightning-fast pace of the client. What you would ideally deliver in a short phone call must sometimes be truncated to email. Similarly, certain news might need to be slightly delayed and/or managed. Let's suppose you have the green light to communicate simultaneously with the GC and the EVP on a fast-moving matter.

Always assume that your email will show up later on page one of the *New York Times* or as an exhibit in an opposing motion.

The next development finds the GC in the air, and inaccessible for several hours. You may wish to wait until she lands to send the email, or, at a minimum, seek guidance, not usually from the EVP, but from the EVP's admin, who you should already know on a warm, first-name basis.

Do the Write Thing. With any writing, including emails, the rules are clear: make it perfect, compelling, and as elegant as possible. Always assume that your email will show up later on page one of the *New York Times* or as an exhibit in an opposing motion. Be elegant, and never underestimate the allure of alliteration. But be prepared to chop down the time on the pre-bill if elegance took too long.

Communication: Style Matters. Lucy Dunn emphasized that outside counsel need to be good "translators," *i.e.*, skillful in making masses of complex and sometimes subtle information meaningful for a GC. This is particularly important when outside counsel is working directly with non-lawyer personnel

at small companies who don't have the luxury of their own legal department.

Manners, Common Sense and the Golden Rule. Michael Baroni offered several practical tips for maintaining a good relationship with a GC. If you take a GC to lunch to pitch your firm, don't bill that person for the lunch! If a GC is transparent enough to introduce you to his CEO, don't cozy up to the CEO behind the GC's back, even if you feel like you speak the same language of "golf and 'gars." I would add another tip, from a veteran lawyer in town: Get the GC and the EVP out of the office, and take them somewhere memorable. For example, downtown Santa Ana offers a "shoeshine and a sandwich" (there's one old-school shine stand left), followed by an after-lunch stroll to view the books and local artwork at *Libreria Martinez de Chapman University* nearby. You may be surprised how much goodwill, and often key substantive insights, will emerge in such a charming setting.

Conclusion

There is much we as outside counsel can learn from business, and our GC colleagues will be evaluating our performance through a business-focused, and process-driven matrix which seeks to measure Legal as comparably as possible against other departments. Hopefully our recent panel, and this article, have provided insights on how outside counsel can deliver outstanding value to corporate clients. In my view, this entails a process which, if done right, can result, as Wayne Gross pointed out at the seminar, in the interests of the client and outside counsel being very well aligned.



Dennis A. Stubblefield is a partner in the Irvine office of Shustak & Partners, P.C. His practice focuses on securities regulatory and enforcement defense, internal investigations, and securities litigation and arbitration. He teaches Securities Regulation as an adjunct professor of law at Western State College of Law. He can be reached at dstubblefield@shufirm.com.

This article first appeared in Orange County Lawyer, July 2014 (Vol. 56 No. 7), p. 24. The views expressed herein are those of the Author. They do not necessarily represent the views of Orange County Lawyer magazine, the Orange County Bar Association, the Orange County Bar Association Charitable Fund, or their staffs, contributors, or advertisers. All legal and other issues must be independently researched.