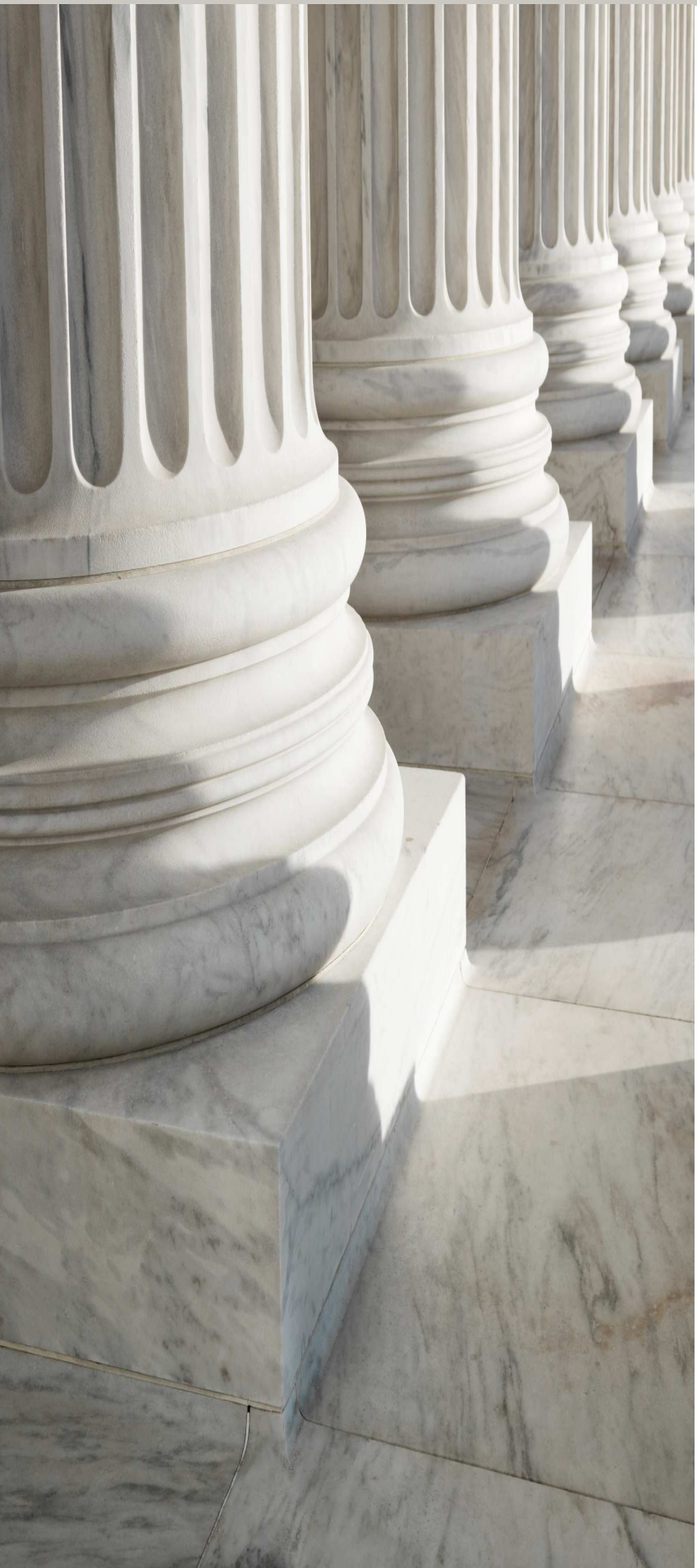

THE ART AND CRAFT OF CORPORATE GENERAL COUNSELSHIP

BY ROBERT F. CUSUMANO

A six-article series, featured in *InsideCounsel*, that addresses the changing and dynamic role of general counsel and the realities they face as they create strategies to facilitate profitable and compliant business practices.

The GC Job Description: Conscience of the Corporation?

By Robert F. Cusumano
January 7, 2016

This article is the first in a six-article series discussing the changing and dynamic role of general counsel and the realities they face as they create strategies to facilitate profitable and compliant business practices.

Since the creation of the corporate legal department, in-house counsel have struggled to define their jobs within the criss-crossing and often contradictory mandates of corporate profitability, on the one hand, and the ethical rules and standards applicable to lawyers and others in an increasingly regulated world, on the other. There is no agreed model for the GC role, and there can be no model that defines such a role universally in the context of tens of thousands of very different corporate endeavors. By its nature, the role is dynamic and adaptive.

That being said, lawyers and society do have to agree on a few of the basic tenets of a general counsel job description that, in turn, will define the very nature of what GCs will be held accountable for. By basic tenets, I do not mean how one deals with outside counsel, or how one may create efficiencies in legal department processes. I don't even mean how one defines success in terms of outputs, be they litigation results, or budgetary savings.

We have to define the role of GCs in terms of ethical mandate.

This dense issue has been boiled down into the phrase "conscience of the corporation," which has served to attract certain legal profession commentators and to repel others. Some GCs believe that in-house lawyers must be the champions of corporate ethicality and must deploy the many hard-learned skill sets of the legal profession in the cause of good governance. Others hold the view that because lawyers hold no monopoly on ethics or honesty, or on wisdom more generally, general counsels do violence to the cause of good governance by declaring it their own exclusive domain. It is perhaps a sign of how muddled the question has become that some of the most experienced general counsels of our largest companies can, with great earnestness, take what appear to be diametrically opposed positions on such an elemental aspect of their own job description.

Those who sponsor a special role for lawyers in all questions of ethics, governance, social responsibility, and fairness in corporate decision-making largely make their case by elevating the societal role of lawyers in a presumed corporate quest for a better world. They point to the ethical rules at the heart of the practice of law, and to the societal responsibilities that the American model of legal practice imposes, as creating a unique lawyer worldview that is broader and perhaps less self-interested than others'. The case these commentators make is as much aspirational as it is practical. Lawyers should be thoughtful and fair and empathetic and therefore, the argument goes, lawyers must be the voice of thoughtfulness and fairness and empathy.

Those who express their trepidation about such a role are far less aspirational, of course, and quite a bit more practical. They point to the evident fact that CEOs and CFOs also have consciences and the capabilities of thoughtfulness, fairness and empathy. They worry that a declaration of a special role for lawyers will merely isolate lawyers from their partners in other professions, and perhaps cause everyone to suppress their own consciences by delivering ethical challenges over to someone else. To a great degree such arguments are based on the aggrandizement of a "special" role for lawyers into an "exclusive" or "monopolistic" role, which few if any of us would sponsor. But the view that lawyers are not in fact any better at resolving ethical, governance or fairness issues than anyone else does get traction in a world where so many lawyers seem to have lost their way.

We need to re-attach this debate to some market and societal realities that are sobering and that, I believe, leave the legal profession with no choice but to accept its "special" role. In this unprecedented age of corporate responsibility and transparency—where companies and all of the executives who lead them are the increasing target of regulators and activists—I believe that it is, in the end, impossible for a GC to shun a special responsibility as the "conscience of a corporation." Virtually all internal and external corporate constituencies now expect this from general counsels, and our training in governance, dispute resolution and the common law situates us well for the job.

Those who would prefer to minimize this role are, I believe, more worried about how hard the general counsel job becomes than they are concerned about which is the best corporate policy. Fears around questions of lawyer arrogance, or suppression of the consciences of others, or detachment from the rest of corporate society, are all rooted in the notion that GCs should make their own jobs easier by deflecting notions of a "higher calling." There is no question that this higher calling makes the job ethically complex and politically dangerous. But, so what? If that is the job, that is the job. And if it is, then practitioners with the right mix of intelligence, integrity, and humility will succeed at it, and arrogant self-aggrandizers will fail or struggle.

But should it be the job? I believe that there is no way around it. Commentators have often noted the unique importance (and difficulty) of legal compliance in the corporate scheme of things, and the overtly anti-competitive, anti-efficiency nature of such compliance. Who else in the executive suite is going to be given the specific mission of slowing everyone else down in order to get it right? The more acute observers have also noted the absence of a meaningful tension between "wisdom" and the particular form of "wisdom" that a good lawyer brings to bear, i.e., the ability to see and empathize with all sides of an issue. Being the conscience of a corporation implies no monopoly on wisdom, and it involves nothing that resembles an arrogant ethical dictatorship. It is simply what we have been trained over years to do. It is what we get hired for, and it is different from other professions.

And, in practice, there is no meaningful distinction between being *the* conscience of the corporation and simply being *one such* conscience among many. By virtue of training in the common law and its disposition of competing claims to fairness and justice, and by virtue of lawyers' immersion in rules and principles of ethics that govern few others in the executive suite, lawyers are uniquely positioned to provide wise counseling on matters of conscience. And matters of procedure and decision-making. And governance. And conflicts of

interest. And anything else that requires an emotional detachment from the day to day ambitions of revenue and profitability. Our nature and our training has defined an institutional mission for lawyers. And if our mission does not include a central involvement in the portfolio of ethical questions, then all that training does little service to anyone.

And there is one more aspect. Whether we want it or not, society outside the corporate suite has charged us with a special role to play in keeping a client's ethics on track. People expect lawyers to play in this arena, and to play hard. When something breaks ethically, society looks for the lawyers. This tendency has already infiltrated many regulatory regimes, not least the canons of ethics and their requirement of independence. I am afraid that, even if we wanted to make every corporate discipline the keeper of its own conscience, our customers, our shareholders, and our regulators are no longer buying it. They expect the lawyers to be the defender of "doing the right thing" and the empowered enemies of ethical misconduct. They expect us to have authority, and scope to do that job. For them, this ship has sailed.

And for that reason, perhaps most of all, GCs disclaim their role of being the corporate conscience at great peril to their livelihoods and their licenses. The key is to know how to do it well, and to find a way to advance the business goals in the process.

The Conscience Role: What Does It Mean?

By Robert F. Cusumano
January 8, 2016

This article is the second in a six-article series discussing the changing and dynamic role of general counsel and the realities they face as they create strategies to facilitate profitable and compliant business practices.

The debate about whether lawyers are the "conscience of the corporation" has mostly looked right past the meaning of that phrase in the day-to-day life of a general counsel. As in all debates, compression of the subject matter into a tag line has made the world seem falsely binary. This distracts from the rich and complex ways lawyers must do their jobs every day, and it underestimates the persuasive power of the art and craft of lawyering. That tool set—an understanding of law and custom, a fact-based dispute resolution methodology, an ability to communicate concisely and delicately, and easy access to the centuries of wisdom handed down in the common law—helps define lawyers' special ethical role even as it helps us implement it.

Let's begin with what this is *not* about. Being the conscience of a corporation does not mean that one only thinks in terms of ethical roadblocks and problems. It does not mean that lawyers must become binary in their reactions to situations. It does not mean that lawyers who might prefer one outcome among many for ethical or fairness reasons need to "win" every situation or discussion, or somehow trump the considered views of others. In fact, being the conscience does not in any respect imply some kind of uber-authority to overrule management in situations where the corporate conscience is called into the discussion (or inserts itself into it).

Metaphors are always at risk of being overwrought, but let's start with one anyway. The conscience of a corporation mostly functions just like the human conscience in every one of us. Most days, it hardly needs to get up in the morning; most days are pretty free of significant conscience consultations, and a comfortable routine more or less prevails.

But that routine becomes easy and comfortable only through the creation of behaviors and habits and rules of the road that make action easy and uncomplicated. In a corporation, those habits and rules are called governance, and they are enormously affected by ethics, fairness, justice, and, in general, issues of conscience. So, one place in which the GC is unquestionably the "conscience of the corporation" is the creation of corporate governance in all its many forms, from shareholder democracy to board oversight to compliance functions to enforcement of rules against misbehavior. It is hardly an exaggeration to insist that in this space the role of the GC is absolutely critical, and that the role includes a large dose of the kind of overarching constituency-management thinking that lawyers excel at.

The conscience, whether in humans or in corporations, is also triggered in moments of conflict between competing objectives. Many of these competitions resolve themselves into resource-allocation questions and do not implicate a special role for lawyers or ethics. Others, however, play into the specific things that lawyers are specifically trained to understand, for example: the tension between immediate employee discipline and the desire for a fair hearing; the desire to not spread bad news and the mandate to disclose material information; the efficiencies associated with organizational delegation to the field and the risks associated

with over-empowerment of far-distant employees. Where ethics seem to conflict with productivity (or any other worthy priority), lawyers tend to have a special role in the disposition of the problem.

More importantly, the debate about the phrase "conscience of the corporation" must not be allowed to overshadow the evident fact that GCs have a broad and deep array of tools to use to mediate ethical clash. A "stop sign" is just one of them, and it is perhaps the one most rarely used. Lawyers tend to be pretty good at articulating rationales, persuading and perhaps even brow-beating (once in a while), and putting seemingly abstract issues into very practical terms. We understand the levers of power and can pull those levers to move a situation back into balance, and we can do that (usually) without blowing things up or insulting people. We also have an array of personal-professional tools to use, which collectively go by the name of "credibility," and access to information sources outside of the corporation to help us make our case. We can bolster our case with the views of others, like outside counsel or a sentence in a judicial opinion. And we are uniquely positioned to put an ethical issue on to the corporate agenda where few others might even see it as an issue.

This too resembles the human conscience: Our conscience doesn't always win, but it always lurks and comments and moves us to think. For the big stuff, our institutional mission as lawyers becomes dominant in the conversation. It can be overruled, and often is, and it can be told it is being impractical, which it sometimes is. But much like a good GC, it is always there playing its part, assuring that the collective wisdom is, indeed, a form of wisdom and not foolishness.

In the end, the debate about the GC role tends to misdirect us. There is an almost universal consensus that, whatever the label, GCs must be a strong voice for ethicality and fairness in corporate environments where GCs are often the only people who will think of such considerations. The rest of the debate is about relative empowerment, as between lawyers and others, and that debate underestimates the rich texture of the organizational and political tools available to sophisticated GCs to move a corporate agenda toward the right and away from the wrong.

Organizational Goals and Structures: What Is Legal's Product?

By Robert F. Cusumano
February 5, 2016

This article is the third in a six-article series discussing the changing and dynamic role of general counsel and the realities they face as they create strategies to facilitate profitable and compliant business practices.

Being a frequent consumer of reporting about in-house lawyering, I find myself continuously baffled by the disconnect between what commentators think is "a good thing" and what my experience has proved to me is "a good thing." Generally speaking, the trade press tends to cater to those who believe that the outputs from a legal department should be standardized in some manner, that productivity should be measured in terms of the quantity of such outputs per unit of time or compensation (presuming a certain minimum standard of quality), that Legal should embrace managerial tools aimed at enhancing efficiency, and that the highest and best use of lawyers in a corporation lies in their execution of an agenda created by the rest of the corporation. We can fairly refer to this as the "facilitative and efficient model" for in-house lawyering.

I have nothing against the use of such a model. Many legal crafts can be made more efficient in production, and in most large organizations, those crafts comprise the lion's share of the everyday work of the department. Lawyers should be subject to the usual rules of engagement within capitalistic enterprises, and efficiency and objective performance metrics are two of them.

All that being freely admitted, I have become deeply concerned that lawyers have lost their way, and perhaps their identity. The facilitative-efficient model of lawyering works only for the more pedestrian of legal assignments, and it breaks down completely when called into a different room in which people are struggling with really complex problems. In that non-routine room, the facilitative-efficient model becomes counter-productive, as the quantity of outputs necessarily declines due to the difficulty of producing product. In that room, often, the very notion of being facilitative with management is itself called into question, because the issue under discussion is how to extricate management from what they have wrought.

I offer for consideration a different model, which can be summarized in the following sentences: "In-house legal departments are small businesses that create and distribute intellectual property. Although they rarely deliver revenues from external sources, in-house legal departments assist companies in keeping a larger percentage of their revenues than in their absence. These small businesses should not just be measured by outputs and costs, but by the value of the intellectual property itself."

This model is as facilitative as any other. It is as business friendly as any other. Its distinguishing feature is that it expressly premises notions of value on the quality of the output relative to the difficulty of the problem. Without such a sliding scale of performance evaluation, the best and most important things that good lawyers can do become undervalued or not valued at all.

This model also preserves, and perhaps elevates in significance, the notion that good lawyering at the highest levels *is about insight* and not only about quantitative output. Centering a legal organization on the idea of delivery of excellent intellectual property considered in a broadly holistic valuation is excellent for morale and for reputation. It is also good for business, since it is unquestionably true that a single good judgment by a lawyer can save companies millions or billions, and therefore dwarf the miniscule savings associated with quantitative models of "efficiency."

My experience also tells me that good lawyers can find places to create value that are not so evident to line managers, or even to CEOs and CFOs. Good legal departments work up and down the lines of production and management, and they often find ways to save money or trouble by changing this or tweaking that. Sometimes, as in a few instances I personally experienced, the savings from a single good insight can pay for the whole legal department for years.

In the end, the commentators who believe that GCs should focus mainly on being facilitative and saving expenses undershoot the best ambitions of good lawyers. The best legal departments understand that they are "IP shops" who deliver custom-tailored products to customers, and they design their internal performance metrics around that basic truth. They *also* understand that a primary goal of Legal must be to facilitate the successful implementation of corporate strategy. But they conversely understand that limiting yourself to just that goal may make managers happy but it almost inevitably makes the corporation poorer.

So I would add "insight" and "judgment" and "hidden value" to the list of nouns that describe law departments, right along with "facilitative" and "efficient."

Solid, Dotted and Matrixed: Reporting Lines for Legal

By Robert F. Cusumano
February 25, 2016

This article is the fourth in a six-article series discussing the changing and dynamic role of general counsel and the realities they face as they create strategies to facilitate profitable and compliant business practices.

Lawyers are not known for having an obsession about reporting lines or for having a deep understanding of management structures. People tend to go to business school for that, not law school. Lawyers receive little or no training in management theory or practice, and so we wing it. Outside the corporate setting, lawyers work in partnerships with widely divergent structures, traditions and ground rules, some of which are massively inefficient or outright dysfunctional. Once inside a corporation, lawyers tend to cling to these informal ways of organizing themselves, despite the evident fact that, all of a sudden, the lawyer reports to a "boss", and the boss usually reports to someone other boss.

In small legal departments, as in law firms of modest size, informality and continuous personal interaction can bond a culture and can therefore suffice as an organizing principle. In such cultures, seniority and success create varying levels of influence or power, and the cultures can replicate themselves through recruitment, the promotion of individuals or the creation of new partners, and the rewarding of economic or professional success. But in larger legal organizations, the centrifugal effects of physical distance, sheer size, and multiple agendas create a compelling environment for more formal organizational systems to take hold. Indeed, when we consider the modern legal department of a large international company, it is impossible to imagine the successful delivery of that much intellectual property in so many places on so many subjects without the creation of a firmly defined hierarchical structure of some sort.

By default, the organizing principle used by nearly all corporations is the traditional "org chart" comprised of boxes (name and title) reporting to other boxes (boss and title), and so on through to the creation of a large pyramid of boxes with the general counsel at the top. This format works reasonably well for companies generally, even though a great many accretions and exceptions to the traditional org chart have taken hold in order to solve the problems associated with its two-dimensional, overly simplistic nature. For legal organizations specifically, the problems posed by the traditional org chart are quite a bit more daunting, since lawyers are usually called upon to advise across a spectrum of issues or businesses, and because the businesses being advised rightfully want to have some level of control or influence over their lawyers.

Thus, the rise of direct and dotted line reporting for lawyers. In its simplest form, this is a variant of "matrix management" in which a person has two bosses instead of one. The "solid line" report is the primary "boss-employee" relationship, and the "dotted line" report is something short of, or different from, that. Dotted line reports can be anything from a basic requirement to keep someone informed, on the one hand, to a mission-critical role on a corporation-wide project, on the other. By their nature, dotted line reports tend to be poorly-defined in theory and not much better implemented in practice. They are soft. They are informal. They are, um, dotted. Almost always, dotted line reporting implies little participation in personnel evaluation and little or none in the setting of compensation.

In many corporate legal organizations, the solid line reporting is from lawyer-boxes to boxes outside of legal, i.e., to the businesses, wherever and whatever they may be. The dotted line reporting is up through the legal org chart. Whatever labels are used in such organizations, what becomes clear very quickly is:

- It becomes more difficult to establish a proper culture of lawyer independence and ethicality, or "tone at the top", because messaging is diffused through a secondary dotted reporting line that by definition is not as important as the primary solid reporting line.
- It becomes difficult to the point of statistical impossibility to assure that all of the lawyers are not economically co-opted by businesses who hold the power to hire and fire, set compensation, and punish proper reporting of problems up through Legal.
- It becomes more difficult for senior or central Legal to obtain visibility about the workings of businesses, especially geographically remote businesses, because the lawyer working there is inevitably influenced by pressures to report problems only if they reach a certain level of severity, or to avoid reporting them at all, or to report them only in a manner that overtly or subtly downplays their significance.
- It becomes immensely more difficult to reward quality lawyering throughout the organization because reward decisions are being made mainly or exclusively by individuals not trained in legal skills.
- It becomes quite a bit more difficult to tackle company-wide generic legal issues, where central legal has only secondary reporting lines and therefore secondary enforcement capabilities.
- All of these problems become more severe as physical or cultural distance between lawyers grows.

All that being said, it is critical that lawyers in corporations be responsive to the fair demands of the businesses they serve. For that reason, the days of unitary solid line reporting through Legal are gone, if they ever really existed, and rightfully so. But in even the simplest matrix organizational structure, *lawyers should report to other more senior lawyers at least as firmly as they report to anyone else.* This can mean a solid line through Legal and one or more dotted lines to businesses or other advisory corporate functions. Or it can mean a pair of equally solid line reporting relationships, in which evaluation, promotion and compensation decisions are made jointly by the supervising lawyer and the supervising business boss.

The solidity of the line through Legal must not only exist, but it must be *seen to exist* by all of the lawyers at the company. Yes, this involves some expenditure of time negotiating raises and bonuses, and maybe it also involves engaging in an occasional controversy about the meaning of good performance. Every once in a while this structure may even lead to the irony of a GC opposing a lawyer bonus recommended by that lawyer's business. This is such a small price to pay for a structure that assures that lawyers act as lawyers – i.e., as creative facilitators of profitable and ethical business practices – and not as (highly-compensated) help-mates for the least ethical among us.

Compliance: What Is It and Where Does It Belong?

By Robert F. Cusumano
March 17, 2016

This article is the fifth in a six-article series discussing the changing and dynamic role of general counsel and the realities they face as they create strategies to facilitate profitable and compliant business practices.

Compliance was once a thing people did (or did not do) until it became its own business or some kind of seemingly definable business function. We can trace this evolution to its origins in various corporate scandals, and we can follow it over time through the emergence of compliance as a specialty, Compliance as a Capital-C department, and compliance as an emerging career path complete with its own professional literature, conferences and bottomless pool of anxieties.

We know that a strong compliance ethic is critical to corporate success, or at least to the reduction of risk of catastrophic failure. We know that corporations are now populated by compliance professionals dedicated to the reduction of misbehavior. And we know that a variety of regulatory schemes now require, explicitly or implicitly, the establishment of compliance protocols. But do we really know what compliance is and where a compliance department should be situated within a company?

The development of compliance functions has been muddled by the absence of rigorous attention to the most basic organizational and professional aspects of the role. Because compliance tends to mean "compliance with law," it sounds like a legal function. Therefore it is most often populated by individuals with some legal background and it is placed squarely within the jurisdiction of the general counsel and the legal department. Because it is casually thought that a good compliance officer must first and foremost be knowledgeable about the laws and regulations being complied with, it seems natural to recruit for legal experience and to promote based on standards similar to those applicable to lawyers. The result of this is, in most places, that compliance becomes a kind of junior partner to lawyers and Legal, subordinated both in organizational terms and in seniority.

This subordinated quasi-legal role has a number of consequences that tend to undermine the effectiveness of compliance professionals, not to mention their emotional wellbeing. Integration into Legal and subordination to lawyers places compliance in a particularly unempowered place in the corporate hierarchy. Lawyers do not run businesses, but are instead advisors, and having Compliance as the junior partner of an advisory function is not going to enhance its institutional authority. In addition, perceiving compliance as a quasi-legal function populates compliance with individuals who are often ill-prepared to understand the businesses and processes that need to become compliant. And the inevitable clash between business efficiency and the often anti-profitable activities of compliance overseers creates an environment of near despair for many in the profession, as they walk a tightrope every day, barely keeping their balance among the competing contradictory mandates being inflicted on them.

It is no secret that compliance lives in a paradox every day. The compliance literature is heavy with self-reflective thought pieces about how to be effective in an environment where your job is inherently alienating

to others, about how to obtain the information you need when people do not want to give it to you, about how to be better "aligned," about how to choreograph the disclosure of bad news without ruining relationships and wrecking information access, and about how to persuade people to somehow "be better." This literature has spawned the abundant use of new-agey words like "embedded" and "facilitative" and "aligned," to the point where it is difficult to know what those words mean. Compliance literature is, by and large, all about emotional and social intelligence; it has become a forum for weeping together. Positioned as an unempowered quasi-legal function, Compliance fights human nature every day on behalf of our "better angels" and just about every compliance professional has the scars to show for it.

I believe that it is time to recast the compliance role entirely. Compliance is not, and should not be made into, a part of the legal advisory function in corporations. Compliance is an elemental *business function*, and it should be populated by individuals who understand business processes, the art and science of management, and the collection and use of data. Compliance skills, therefore, will certainly vary widely based on what products are being produced and how, but the core skills and training will have a central universal commonality: an understanding of the management of businesses. Compliance professional will, like other executives and employees, need to understand the law (and be advised by corporate counsel about the law), but their core professionalism lies elsewhere.

This model has enormous implications for the manner in which we may drive Compliance forward into becoming its own profession. The model implies business school over law school for basic training. It implies working in the business as on-the-job training, rather than working in the legal department. It implies matrixed reporting lines that are entirely the opposite of those I recommended for lawyers in an earlier article in this series: Compliance should report primarily through the business lines and only secondarily through Legal (if at all). At the senior levels, Compliance should be afforded direct reporting to both the CEO and the Board of Directors. Perhaps most importantly, Compliance should become its own profession with its own clearly delineated standards for admission into the profession, much like lawyers and accountants and auditors already have arranged.

An inevitable result of this kind of clarification of the role of Compliance, with its emphasis on professionalism and business knowledge and training, will be an elevation of the reputation and prestige of the compliance function and the individuals who reside within it. One might even imagine a symbiotic relationship between management and compliance in which there is an employment revolving door between the two, or in which tours of duty within compliance are regarded as essential to long-term career paths within management. Even failing that rosy aspiration, it seems clear the building Compliance on a firm base of business savvy, and getting it out of Legal, will do good service by removing one of the many causes of anxiety and ineffectuality in the field.

GCs as Managers of the Evolution of the Rule of Law

By Robert F. Cusumano
March 31, 2016

This article is the sixth in a six-article series discussing the changing and dynamic role of general counsel and the realities they face as they create strategies to facilitate profitable and compliant business practices.

Corporations are creatures of the law, virtual legal beings that assumed their form to achieve the economic purposes that drove their creation. Their most basic purpose is to limit the legal liability of the humans that inhabit them. But the corporate form has expanded far beyond that original purpose, as people have organized themselves and their work lives around these liability-limiting structures. The development of law and regulation, and in particular the evolution of the American tort system, has situated corporations at the intersection of all of the cross-currents of the world's social, economic and legal developments. This places corporations at the center—and at the mercy—of the development over time of a sensible and stable rule of law. And it places general counsel of those corporations at the center of that center.

It is perhaps unconventional to think of the "rule of law" as a dynamic social construction project, rather than as a static fidelity to the perceived meaning of words on a page of common law or legislation. But this dynamic model is what corporate GCs face every day as they try to manage the legal affairs of their enterprises. While internal corporate constituents want legal certainty and clarity as they try new things, the world beyond delivers mostly shadows and mere tendencies to work with. While some judges would insist on static definitions of words and laws, linguists and good lawyers know that there is no such thing. Language and laws evolve as societies change, and new sources of tension among meanings arise every day. Predicting outcomes on the edges of the law is, in the end, more art than science.

As far as real answers to seemingly simple questions, very often modern societies deliver, in their own good time, outcomes that must arise (if at all) only out of the complex workings of institutions that are built to take inputs from a vast array of conflicting constituencies with interests that might appear to be irreconcilable in economic, social, political and even psychological terms. At the edges of the law we must navigate a cacophony of interests and forces; in trying to predict outcomes in advance, we must understand those forces and the manner in which our system allows them to argue with each other. This process of prediction becomes, in a complex society, the very definition of the word "judgment", and it is judgment that distinguishes the best corporate counselors from their peers.

The understandable yearning for certainty in advance of this multi-dimensional societal mediative process often misleads clients and can create enormous pressures on GCs. Our constituencies yearn for more clarity than the best "judgment" can provide. The simplest expression of this is the proverbial conflict between the "letter" and the "spirit" of the law. (Hint: "spirit" tends to win in court and on TV; "letter" tends to prevail when the CEO wants a simple answer.) That dichotomy, however, hides a more important truth: Outcomes

under a democratic rule of law are as much influenced by process, reputation and human nature as they are by facts and precedents. As a result, the ultimate execution of the elements of a GC's strategic judgment will depend on his or her credibility with client constituencies, a credible track record that garners support, and an ability to adhere to a chosen pathway toward resolution while adjusting that pathway as events unfold.

At a meta-level, all of this depends on the existence of a viable rule of law that offers opportunities to resolve conflict in ways that diverse constituencies can accept. It requires, at least, a set of agreed processes designed to achieve some form of outcome. In the absence of a viable rule of law, this is not possible; judgment becomes an absurdity and outcomes are always subject to re-negotiation or, worse, to corruption or violent intervention.

I have experienced this first-hand with regard to significant corporate investments in certain countries where, if there exists a rule of law at all, it is as malleable as the whims of the people who stand to benefit from outcomes, and as transient as the payouts required to achieve some sort of accommodation. In such environments, it is useless and perhaps deceptive to pretend to offer "legal advice". It was somewhat depressing to decline to offer any "legal advice" in these circumstances, but in fact there was no legal advice to be had. In those situations, there may be the illusion of laws in existence, but outcomes turn on dynamics that are anything but lawful. A good lawyer has no business trying to judge outcomes in such systems, other than to make the same guesses as any other professional might make based on living in the world as it unfortunately actually is.

In more stable societies, the rule of law remains vulnerable to the passions and whims of all of the players in the system even as it has proven its solidity and value as a framework for argumentative chaos to play out. Lawyers in general, and GCs in particular, should be (and mostly are) the most important champions of the validity and necessity of the processes of law as the indispensable medium through which seemingly intractable problems can reach resolution.

Thus we come to main point of this article, and maybe of this series of articles. How do lawyers, and especially GCs, best cope with these cross-currents?

I would say, please, *live the paradox*. Embrace it; don't pretend it isn't there. Just about every day, you will find yourself in the midst of contradiction: short-term versus long-term; expedience vs. investment; exploitation of the defects in the rule of law versus correction of those defects; local sacrifice for larger gain. The rule of law is our home, our *only professional habitat*; let's not destroy it for transient economics or the illusion of same. Promote the rule of law; stand up for the integrity of the process. Only there lies a future for enlightened and sustainable corporate capitalism.

In these six short pieces, we have touched upon the existential and the practical, from ethics to org charts, everything from the grand to the drearily mundane. Perhaps a mental model for lawyering starts to emerge.

Yes, stressful. Yes, controversial and oft-times personally risky. But suppressing the paradox does no good for anyone. The job just requires facing up to it, in one way or another. Perhaps there are ways to be a force for

the rule of law, on a 50-or-500-year view of what makes sustainable economic sense *in addition to* immediate ethical sensibility. Perhaps we lawyers are on to something better and more solid than a transient entry on a quarterly income statement. Perhaps, with all our training in rhetoric and communication and the thousand years of the common law, we might well eventually persuade people that doing the right thing is the only thing that is truly significant.