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TOPIC: Educating Executives and Board Members Why the General Counsel Needs to be Involved at a Strategic Level

- I. Preview
 - A. What does it mean to be a “strategic leader”?
 - B. What does it mean to be a “strategic General Counsel”?
 - C. What does it mean for the General Counsel to be a “Strategic Corporate Leader”?
 - D. How to educate company (1) executives, and (2) board directors.

- II. What is a “strategic leader”?
 - A. Definition
 1. Military concept and jargon: strategy, tactic, target, campaign, etc.
 2. Functional definition: “Establishing a long-term plan of action designed to achieve a particular goal or set of objectives.”
 3. Compare and contrast “tactics, execution, planning and implementation
 4. Examples: how to retain employees, reduce manufacturing defects, increase customer satisfaction, increase profitability, improve quality, etc.
 - B. Typical strategic business leaders; CEO, CFO, COO, CIO, CAO, HR, et.al.
 - C. Typical traits, behaviors, and attributes of a strategic leader:
 1. Curiosity
 2. Challenging, i.e., devil’s advocate
 3. Broad perspective; see the big picture and understanding consequences
 4. Weighs implications of long- and short-term actions
 5. Considers the interests of all stakeholders, e.g., investors, customers, regulators, owners, employees, public, suppliers, etc.,
 6. Agility moving from strategy to tactics
 7. Self-awareness of personal strengths and weaknesses
 8. Creative and open-minded
 9. Courageous
 10. Analytical about issues and alternatives
 11. Knowledgeable about business, finance, etc., “world view”
 12. Contemporary
 13. Probing
 14. Risk-taker
 15. Pro-active
 16. Collaborative

- III. What is a “strategic General Counsel”?
 - A. The core requirement of the chief legal officer: The objectives of the legal operations of the company must be effectively and consistently identified and managed....JOB #1
 - B. Examples at the macro level: ADR vs. litigation vs. settle; telecommuting; make or buy legal services; law firm rate increase policy; law firm convergence
 - C. Examples at the micro level: unique case resolution; use of contract, secondment, part-time help; status of legal publications, allocation of administrative support

- IV. The General Counsel as a “strategic corporate leader”
 - A. Above and beyond the role of chief legal officer: i.e., provide business guidance, direction, ideas, and perspective to the company that are separate and apart from legal advice, but not inconsistent with your role of legal counselor.
 - B. Why the General Counsel may be particularly qualified for the role of “strategic corporate leader”
 - 1. In addition to the typical traits of a strategic leader, General Counsel usually possess other highly valuable – perhaps even unique -- attributes of a strategic leader, including:
 - a. Trained as problem identifiers and solvers
 - b. Effective communicators
 - c. Intelligent
 - d. Well-educated, well-read
 - e. Calm, level-headed and “unflappable”
 - f. Experienced negotiator
 - g. Respected with stature as an “officer of the court”
 - h. Objective and thoughtful
 - i. Custodian of the “corporate culture”
 - j. Conscience of the company, i.e., the “ethical watchdog”
 - k. Above the fray of business performance and profit
 - 2. Ready access to CEO, other C-Suite executives and Board members
 - 3. Pervasive impact of the law and regulations on all staffs and operations (e.g., Dodd-Frank, Sarbanes-Oxley, FCPA)
 - 4. Heightened public focus on “doing the right thing” (e.g. Wells Fargo, GM, Enron, Tyco, WorldCom)
 - 5. Increased criminalization and personal accountability of leadership for traditional “civil” wrongdoing by the company
 - 6. Other non-legal roles, e.g., compliance, HR, risk, Secretary, public affairs, etc.
 - 7. Sends a clear message to company stakeholders about commitment to a “compliance culture”
 - 8. “Staff (vs. “line”) function can better ask the delicate, hard, and sensitive questions of the “boss”
 - 9. Doing the *negative* “dirty work” of others
 - 10. Preventative decisions can avoid inevitable *legal* “clean-up”

- C. Why General Counsel want to become strategic corporate leaders
 - 1. Career enhancement or change; i.e., stepping stone to non-legal position (e.g., Julie Sweet, Accenture CEO; Brian Moynihan, Bank of America CEO, John Finnegan, Chubb CEO)
 - 2. Financially rewarding
 - 3. Exciting transformative projects
 - 4. Assist in the success of the enterprise
 - 5. Improve legal service
 - 6. Improve morale of the legal department members
- D. Know what risks this role entails
 - 1. Separation of legal advisor from business advisor is essential to protect the attorney-client privilege
 - 2. You may be taking the place of another, more suitable, person
 - 3. Significant increase in work
 - 4. Risk of failure; "Do you add real value?"= loss of stature/respect
 - 5. Alignment with top leadership: "live and die by the sword"
 - 6. Resentment of colleagues: "why are you so much better than "X"?"
 - 7. Do what you do best: law, "stick to your knitting"
 - 8. Frustration: ACC: 60% of CLO's want this role, but only 25% get it
- V. Educating company leadership about your role as a corporate leader: INCREMENTAL APPROACH
 - A. Be the absolute best General Counsel possible: optimize and market the provision of legal services, including results, costs, responsiveness, professionalism
 - B. Build strong networking ties with other executives by:
 - 1. Supporting their legal needs
 - 2. Being personable and friendly
 - 3. Communicating legal and related matters of interest to their function
 - 4. Joining cross-functional projects and teams
 - 5. Tolerating politics and difficult personalities
 - C. Improve your skills and knowledge to make yourself more "strategic" by:
 - 1. Disabusing a naysayer reputation and strive to "get to yes"
 - 2. Assisting with non-legal company crises
 - 3. Informing yourself about the business and industry
 - 4. Seeking and accepting non-legal projects or positions
 - 5. Reading and understanding all significant financial reports, including the balance sheet, P&L statements, quarterly and operations reports, budgets, Board reports, outside analyst reports
 - 6. Communicating in plain, practical language, avoiding legalese
 - 7. Being proactive and an active listener
 - 8. Thinking creatively and like a business person
 - 9. Reading the business plans, prospectuses and articles of and about competitors
 - 10. Study prior year business plans and previous "strategic initiatives"

- 11. Providing training, information and interpretation on relevant legal and related developments to colleagues, their staffs, and the Board Directors with emphasis on how and why it impacts the company
- 12. Set aside some quiet time to actually think creatively and expansively
- D. Seek out strategic roles and opportunities
- E. Ask the CEO, and all department heads and the Board committee chairs to “sit-in” on various planning, reporting, regular and/or special meetings so you can inform yourself and be more responsive and helpful providing legal services to the organization
- F. Send short, concise notes to essential decision makers with ideas, concerns or considerations, that begin, “I understand that you are talking about possibly doing “X”, have you thought about...”
 - 1. Avoid grandstanding or frightening.
 - 2. Include constructive suggestions for overcoming any concerns that are raised, and offer to assist finding alternatives, and explore other issues
- G. Ask your CEO and other senior leaders for a “seat at the table” emphasizing that being there will allow you to be more effective in your role as General Counsel (or other job responsibilities) because:
 - 1. Obstacles can be identified early on and addressed
 - 2. You will be able to properly staff the work
 - 3. Legal work needed for any new initiative can be accomplished more quickly and accurately

Be sure to provide assurance --- if it becomes necessary --- that you will limit your Involvement at the strategic session to your role as corporate counsel. This allows for your later input as needed or appropriate beyond the legal role (See V.F. above)

- H. If you have the opportunity to learn *in advance* about topics for strategic discussion, communicate with the sponsor *in advance* of the targeted session to provide useful perspective to that person or persons so they do not feel ambushed or embarrassed and are able to preempt your perspective or invite you to raise it. This will give you credibility with the decision makers and win the allegiance of the sponsor by helping him/her look smart and thoughtful, leading to your greater involvement in future initiatives.
- I. In time, move beyond the role as a “stealth” corporate strategic leader, and begin subtly asserting yourself with helpful and insightful comments, questions and observations that are fundamentally positive and constructive, though possibly provocative. With a consistent pattern of your useful and insightful input over time, your involvement will be seen as integral to future strategic discussions

VI. Educating company leadership about your role as a corporate leader: DIRECT APPROACH

- A. Resistance to your expanded role as a strategic corporate leader can occur for a variety of reason, but you will not know unless you ask. So, ASK.
 - 1. Ordinarily, begin the request with your immediate supervisor, ordinarily the CEO or the lead senior executive of the relevant corporate function

2. Likewise, you should enlist the support of the CEO to ensure your involvement in strategic matters at the Board and its committees. This can be complicated depending on the involvement and relationship between the Board, its various directors, and their relationship with particular outside legal counsel. To this end, be sure to enlist the support of your outside Board legal counsel to participate in strategic matters.
- B. Reluctance and outright refusal to expand your involvement requires educating leadership about the special attributes you have as General Counsel (See VI.B.)
 - C. Ultimately, you may need to “change their mind” See Wall Street Journal, February 22-23, 2020 pp. C1-2:
 1. “Reduce Reactance” by diminishing the sense of loss of control and providing multiple solutions for your increased involvement allowing the leader to choose.
 2. “Ease Endowment” by recognizing that the status quo – which most people prefer -- is not that bad, but could be improved by demonstrating improved quality of decisions and lower cost to the company with your involvement
 3. “Shrink Distance” by showing that your increased involvement is much closer to the current environment, i.e., within the ‘zone of acceptance’ of existing involvement
 4. “Alleviate Uncertainty” because of normal anxiety that the new arrangement will be better than the old, suggest a trial period that is easily reversible if the new arrangement is unsuccessful
 5. “Find Corroborating Evidence” since there is strength in numbers and peer pressure is effective, provide anecdotal and quantitative facts about the extent of General Counsel as strategic corporate leader in other, especially similarly situated, successful companies
- VII. Conclusion Beyond on-going excellence as the chief legal officer, communicate to relevant colleagues and decision-makers your candid and reasoned perspective about company initiatives, as well as any of your own new ideas. Be patient and demonstrate in a low-key, non-threatening manner your unique perspective for the betterment of the company