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# THE POWER OF THE BUSINESS-MINDED GC

A 2017 NYSE GOVERNANCE SERVICES/BARKERGILMORE SURVEY





In spring 2016, NYSE Governance Services and BarkerGilmore published a joint research report examining the evolving role of the general counsel in public companies across the United States. One of its key findings was that increasingly, GCs' primary role has expanded beyond that of safeguarding the organization against legal and ethical transgressions to include strategic advisory responsibilities. In fact, a compelling majority (79%) of the 187 directors and officers surveyed then agreed that as early as 2020, one of the general counsel's most valuable functions would be to advise the board and the executive team on business strategy.

As the role of in-house counsel continues to broaden amid an increasingly diverse scope of enterprise risks, many are recognizing the added value a GC with strong tactical skills can generate in helping shape the organization's long-term strategy across the spectrum of operations. To create such a competitive advantage for the company, however, respondents to the survey indicated that GCs need to take a prominent, proactive seat at the executive table, rather than maintain an auxiliary role with a focus toward minimizing risks and potential litigations arising out of the C-suite's undertakings. In other words, tomorrow's most valuable in-house counsel will have successfully crossed over from legal consultant to key member of the strategic decision-making team.

While most respondents agreed with this premise, when we once again took to the field in February 2017 to survey nearly 300 directors and C-suite executives on the skills and core competencies most needed for in-house counsel to successfully accede to this new role, responses highlighted some shortsightedness among current GCs as well as those who work closely with them. This report presents our findings.

**THE ROLE OF THE IN-HOUSE COUNSEL HAS BEEN EVOLVING** naturally and synergistically alongside new corporate realities, morphing away from a traditionally compliance-centric, litigation focus toward that of expert adviser in all areas of corporate governance. Elevated expectations caused by an increasingly complex and litigious environment have already compelled several GCs to broaden their horizons and take an enterprising stance in the

FIGURE 1

**D&O LEVEL OF SATISFACTION WITH THEIR GC**

	Extremely satisfied	Satisfied	Needs improvement
Strategic thinking	33%	47%	20%
Financial acumen	26%	58%	16%
Ability to build strong relationships	48%	43%	9%
Business acumen	35%	56%	9%
Effectiveness of communications	55%	36%	8%
Clarity of intentions	51%	42%	7%
Organizational skills	50%	43%	7%
Emotional intelligence (EQ)	45%	48%	7%
Industry acumen	43%	50%	7%
Ability to deliver on promises	60%	35%	6%
Purposefulness	58%	36%	6%
Management of legal department	60%	36%	5%
Knowledge of the business	54%	42%	4%

corporate and strategic planning process, but our survey shows there nevertheless remains a notable number of board members and C-suite officers waiting on their legal chiefs to up their contribution to company goals.

Overall, most of the directors and officers who participated in the survey reported a high level of satisfaction with their counsel's ability to deliver on promises, their management of the legal department, and their purposefulness (Figure 1). The results indicate that by the very definition of the role—ensuring compliance with all relevant laws and regulations, collaborating effectively with the executive management team, and understanding the company's risk tolerance and mitigating accordingly—GCs are indeed fulfilling their obligations satisfactorily, but according to senior management and board members in our study, more could be done by some GCs to contribute strategically to company growth.

It naturally comes as no surprise that the top two attributes directors and officers believe a successful general counsel should possess to be considered a valued strategic adviser to the executive team and board are legal expertise and sound judgment

FIGURE 2

### COMPETENCIES A GC SHOULD POSSESS TO BE CONSIDERED A VALUABLE, STRATEGIC ADVISER TO THE EXECUTIVE TEAM AND BOARD\*

<b>66%</b>	Legal expertise
<b>49%</b>	Sound judgment
<b>34%</b>	Business acumen
<b>33%</b>	High integrity
<b>32%</b>	Strategic perspective
<b>23%</b>	Effective communication
<b>19%</b>	Problem solving
<b>18%</b>	Risk management
<b>9%</b>	Forward thinking
<b>8%</b>	Ability to influence

\* Respondents were asked to select up to three

FIGURE 3

### AREAS MOST CRITICAL FOR GCs TO BECOME A STRATEGIC ADVISER\*

<b>45%</b>	Be more strategic
<b>29%</b>	Improve business acumen
<b>27%</b>	Improve industry acumen
<b>26%</b>	Improve knowledge of the business
<b>22%</b>	Improve financial acumen
<b>18%</b>	Build stronger relationships
<b>15%</b>	Communicate more effectively
<b>10%</b>	Improve emotional intelligence (EQ)
<b>9%</b>	Deliver on promises
<b>9%</b>	Be more organized
<b>7%</b>	Have legal department under control
<b>6%</b>	Declare intentions
<b>6%</b>	Be more deliberate

\* Respondents were asked to select up to three

(Figure 2). The evidence of times changing, however, is that 34% of respondents selected business acumen as the third most desirable competency in a GC, well ahead of problem solving (19%) and risk management (18%).

In fact, of the areas respondents believe to be most critical for their GCs to improve in order for them to own their role as adviser to the board and executive team, business acumen (29%), industry acumen (27%), and financial acumen (22%) ranked highly, along with the need to acquire a better knowledge of the business in general (26%) (Figure 3).

“Broad legal knowledge is assumed,” noted a recent *Inside Counsel* article on the issue. But “it’s far from enough to succeed as a corporate legal executive in 2017.” Keith Cobb, an independent business consultant and strategic adviser and chair of the audit committee for Alliance Data Systems Corp., agrees. “A broad-based set of skills is absolutely necessary for a GC to be an effective member of a corporate leadership team. Otherwise, he or she is simply an in-house technical adviser.” Cobb believes a well-rounded GC contributes to the company’s success, in contrast to simply acting as a watchdog who helps the company avoid trouble.

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—KEITH COBB, ALLIANCE DATA SYSTEMS CORP.

A thorough understanding of the business and the industry is essential to providing sound and astute legal advice. A GC cannot be reasonably expected to weigh all possible implications of a decision without first understanding the business—both internally and externally—along with the variables that may affect growth, including potential changes in regulations and their effect on the strategy. “The GC is involved in many contract negotiations and other significant

issues facing the company,” explains Bonnie Hancock, executive director of the Enterprise Risk Management Initiative at North Carolina State University and a member of the compensation committee at Powell Industries. “Having greater business, industry, and financial acumen could improve the value of the advice that is given [and allow GCs] to be better able to see potential opportunities and identify and/or evaluate trade-offs that have to be made.”

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—BONNIE HANCOCK, POWELL INDUSTRIES

Echoing this view, more than half (53%) of survey participants say they wish their in-house counsel could add more value to the business strategy, and a full third would also like to see them gain a better grasp on enterprise risk management (ERM) (Figure 4). Yet, as GCs continue to make the biggest splash in the areas of corporate governance (69%) and compliance/ethics (67%), performance in matters of ERM falls short, with 41% board and C-suite approval, while contributions to business strategy place among the areas in which GCs are making the least impact, at 17% (Figure 5).

Bob Barker, managing partner at BarkerGilmore, explains that good business strategies involve risk; not avoiding risk, but managing risk, and GCs can therefore make a substantial contribution to the business strategy by identifying and steering the executive team through the risks involved. When his business partner, John Gilmore, asked a highly respected general counsel how he has been able to create a competitive advantage for the company, the GC replied, “By dealing with most of the governance issues, I allow the board and CEO to focus on what they do best, making smart business decisions that make the company money.”

Surprisingly, in matters where GCs are making the greatest impact, shareholder engagement and

disruption risk bring up the rear, with only 6% and 5% respectively. The rise in activism and the increasing influence of proxy advisory firms have added to the array of challenges when communicating with shareholders. It has therefore become all the more critical for GCs to identify potential vulnerabilities in the engagement practices of the board and management team, draft a response plan in the event of activism or criticism, and lay out an outreach strategy to minimize risks and optimize relationships across the board. For that to occur, counsel must be involved in all matters of governance—including composition, accountability,

FIGURE 4  
**AREAS WHERE GCs COULD ADD MORE VALUE\***

<b>53%</b>	Business strategy
<b>33%</b>	Enterprise risk management
<b>25%</b>	M&A
<b>19%</b>	Global growth/operations
<b>19%</b>	Industry knowledge
<b>18%</b>	Corporate governance
<b>16%</b>	Crisis management
<b>16%</b>	Disruption risk
<b>13%</b>	Compliance/ethics
<b>12%</b>	Shareholder engagement

\* Respondents were asked to select up to three

FIGURE 5  
**AREAS IN WHICH GCs ARE MAKING THE GREATEST IMPACT TO THE BUSINESS\***

<b>69%</b>	Corporate governance
<b>67%</b>	Compliance/ethics
<b>41%</b>	Enterprise risk management
<b>20%</b>	M&A
<b>18%</b>	Crisis management
<b>17%</b>	Business strategy
<b>10%</b>	Industry knowledge
<b>7%</b>	Global growth/operations
<b>6%</b>	Shareholder engagement
<b>5%</b>	Disruption risk

\* Respondents were asked to select up to three

and compensation—to ensure thorough planning, preparedness, and prudent delivery, even if the investor relations (IR) team is the one assigned to communicate directly with shareholders.

Furthermore, GCs can play a significant role and wield great influence in the company’s earnings disclosures and related filings. Experts recommend the general counsel lead a compliance team, made up of IR, finance, and the compensation committee, among others, to address such topics as pay ratio disclosure and to facilitate the say-on-pay experience, as well as the overall proxy process.

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—BOB BARKER, BARKERGILMORE

As pointed out in Figure 3, with a continuously changing backdrop, legal counsel need to be both well versed in the business (e.g., finance, operations, marketing) and cognizant of the realities surrounding the industry. They need to understand where, how, and why a company fits in its industry, as well as where its competitors stand. They need to be alert to real and potential threats to the strategy and can’t afford to look the other way or insist on preserving

a risk-averse position, particularly when it comes to disruptive innovations. They must work with other C-suite executives in identifying the pros and cons of venturing into uncharted territory or staying the course, despite their natural reluctance toward risk taking. A successful GC will embrace the strategic aspect of the role and work to find balance between protecting the business and positioning it to grow.

**SUCCESSION PLANNING**

Corresponding to the rise in the strategic importance of the general counsel’s role is an even greater need to ensure there is a plan for succession. Yet more than half (55%) of respondents say their company does not have a formal general counsel succession plan in place, and an additional 8% don’t know if such a plan exists. A similar proportion (54%) have not yet identified a successor, while 16% say they lack confidence in the successor’s ability (Figure 6). Only three directors and officers out of 10 report feeling “somewhat” (18%) to “strongly” (13%) confident in the identified successor.

Gilmore isn’t surprised by these results. “With law department budgets running so lean, it is uncommon for a clear GC successor to be identified and closely aligned with the board, especially at small or mid-sized companies. The attorneys working under the GC are typically consumed by the day-to-day business and not involved with the higher-level governance and risk issues that are a priority for the board. This lack of board interaction can create doubt over a potential successor’s ability to act as a true strategic adviser as general counsel.”

So when the need occurs to find a replacement for the general counsel, although a third of respondents pointed to a thorough knowledge of the business as one of the key competencies for today’s GCs, only 6% believe the company should focus on internal candidates despite the firsthand experience and solid knowledge of the inner workings of the organization they bring to the role. Rather, 52% say the best way to handle a general counsel succession is to hire a specialty boutique executive search firm to benchmark internal candidates against external talent to ensure the most qualified candidate is appointed.

“This validates what we have experienced for years,” remarks Barker. “No matter how strong the

FIGURE 6  
**LEVEL OF CONFIDENCE IN GC SUCCESSOR’S ABILITY**

We have not yet identified a successor to the GC.	<b>54%</b>
I am somewhat confident in the successor’s ability to become a permanent replacement to the current GC.	<b>18%</b>
I am strongly confident in the successor’s ability to become a permanent replacement to the current GC.	<b>13%</b>
I have doubts in the successor’s ability to become a permanent replacement to the current GC.	<b>11%</b>
I am not at all confident in the successor’s ability to become a permanent replacement to the current GC.	<b>5%</b>

internal candidates, boards almost always insist on benchmarking internal candidates against a field of external talent. It is understandable that the board wants to make a well-informed decision and be certain that the very best person sits in the seat.”

It is also possible that the growing list of expectations that come with wearing the many hats of the modern general counsel has made the task of finding a replacement, particularly internally, more challenging. Yet, the mere idea that, when searching for the best attorney, an organization needs to look beyond regulatory know-how to unearth a candidate who also possesses a vast array of nonlegal competencies and business savviness should make the GC succession plan a priority for the board and executive team.

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— JOHN GILMORE, BARKER GILMORE

Both Cobb and Hancock maintain, however, that while the above is a reality, the rarity of formal GC succession plans across US public companies may be due to the size of the pool of skilled counsel available to them at a moment’s notice. “There are plenty of good lawyers out there looking for better opportunities,” explains Cobb, “and continuity of

institutional knowledge is not particularly as critical as perhaps in other dimensions of a business.”

“I think the GC succession is probably slightly less important than other management roles at a similar level since it would likely be easier to fill in gaps with outside law firms,” adds Hancock.

Gilmore says that when talking with CEOs before a GC search, the spotlight of the conversation always shines on cultural fit and the ability of the new GC to act as a trusted adviser to the executive team and the board. “Emotional Intelligence (EQ) is a major component of assessment for GC candidates. Those with high EQ are much more likely to earn a seat at the table, as it allows them to better manage stressful situations. Additionally, people with high EQ are more thoughtful, build stronger relationships from the top down, and earn the respect to be viewed as a trusted adviser.”

#### CONCLUSION

In sum, the results of our last two surveys reveal an interesting trend in the role of general counsel across US public companies. There is no doubt that corporate directors and officers seek a lot more than legal advice from today’s general counsel, and those expectations will likely continue in the years to come. Those planning to enter the profession may wish to consider cross-education with a business degree to generate even more value to the board. However, Cobb stresses that the best GCs do not gain their business knowledge from degrees, but rather from on-the-job experiences and through actively inserting themselves into the senior leadership decision-making process. “Formal cross-education might be helpful to a degree,” he says, “but it’s no substitute for experience.”

“What truly makes a general counsel great does not show up on a resume,” notes Gilmore. In the end, it appears a mix of legal expertise, business acumen, and strategic thinking may be the golden ticket to successfully fulfilling the role expected of tomorrow’s top-performing in-house counsel.

## **ABOUT BARKERGILMORE**

BarkerGilmore is a leading boutique executive search firm focused exclusively on building in-house legal and compliance departments from the top down. We offer our clients highly specialized expertise and knowledge, unrivaled access to the best candidates nationwide, a concierge service mentality, and a customized value proposition worth investigating. [www.barkergilmore.com](http://www.barkergilmore.com)

## **ABOUT NYSE GOVERNANCE SERVICES**

NYSE Governance Services is an integrated suite of resources for public and privately held companies worldwide seeking to create a leadership advantage through corporate governance, risk, ethics, and compliance practices.

NYSE Governance Services offers a range of training programs, advisory services, benchmarking analysis and scorecards, exclusive access to peer-to-peer events, and thought leadership on key governance topics for company directors and C-level executives.

NYSE Governance Services firmly believes that businesses run ethically enjoy greater long-term success, ultimately promoting stronger capital markets. For more information on NYSE Governance Services, please visit [www.nyse.com/governance.com](http://www.nyse.com/governance.com).



