



The Fundamental Role of the Corporate Lawyer — And How to Succeed in It

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What the Client Wants and Needs

When I think of the fundamental role of the corporate lawyer, I start with the concept of helping the client achieve its objectives. I remember one of my law school professors at Harvard, Professor Casner, who was a very confident — some would say cocky — guy who strutted around the stage as he was lecturing to us. At the end of the year, he said, “There’s always a way to achieve the result that your client wants. It may not be direct, it may not be obvious, and if you’re not smart enough to figure it out, give me a call — my consulting rates are reasonable.” He was only half joking. The essence of what he said was true: There almost always is a way to achieve the desired result. The challenge is to find it. Meeting that challenge is the way good corporate lawyers can be useful to their clients, adding value and playing a valuable role in society.

After the client tells you what it wants, you must determine what the client really needs, which often is not the same as what it says it wants. There may be a very different way of achieving the client’s objectives. Let me give you an example. One of the first projects I had as a young lawyer was to help an insurance company create what was then a new product called a unit investment trust variable annuity. This product would be both an insurance policy and a security invested in mutual funds. No one had used this approach before, and we had to develop a new framework that involved coordinating securities and investment company regulation by the SEC, securities and broker-dealer regulation by 50 state securities departments, insurance regulation by 50 state insurance departments and complex IRS tax provisions. We needed to help our insurance company client understand how it could change its long-standing insurance documents to comply with all the diverse regulatory requirements, many of which appeared on the surface to be inconsistent, if not in conflict. At first, the client’s reaction was that there was no way it could change any of its longstanding insurance policy provisions, assuming that there must be an insurance law requirement or other good reason for them. We challenged those assumptions, and together with our client, we analyzed each of those provisions and sorted out what was really important, what could be changed to achieve regulatory compliance, and what could not be changed and required further negotiation with the regulators. At the end of the process, we created a whole new regulatory framework and a radically changed set of insurance policies for the company. I was surprised at how many things that the client initially said could not be changed ultimately, after further probing, could in fact be changed . . . at least changed enough to satisfy the regulators without compromising the client’s objectives.

Figuring out what the client needs is an important proactive piece of the corporate lawyer’s role. To do that you must spend a lot of time learning about and understanding the client’s business — understanding the industry the client operates in; understanding the business environment in which it operates (for instance, for a client that sells its products to retailers, understanding what is happening in the retail economy in the U.S., or, if they operate internationally, the retail economy in the major countries where they operate around the world); and understanding what’s happening with their competitors and customers. I use the library and the Internet to find information about clients, their peer group, their competitors and their customers, and what’s happening in the industry and the economy, just so I can better understand what’s going on with my clients. Then I can have an intelligent conversation with them that’s broader than just what they can and cannot do legally, so I can do a better job of helping them achieve their objectives.

The Client’s Perspective

Figuring out what the client needs also helps you think about things from the client’s perspective. That’s another element of what makes a great corporate lawyer — the ability to think about things the way the client would without losing the legal perspective. That’s the way you can add value because you can not only understand the business perspective but also bring to bear your legal expertise to help the client solve a problem. After all, the matters we are asked to deal with are always mixtures of legal and business issues. Clients are grateful when you understand the business issues and factor them into the decision-making process. Clients also want us to make a recommendation, not just say “on the one hand . . . but on the other hand . . .”

Learning about business in general, and clients and industries in particular, will lead you into non-legal areas. Given the recent accounting and related financial disclosure scandals, one of those areas is accounting. You can’t really be a good corporate lawyer today without understanding basic accounting principles and the accounting issues that are in the news today. Indeed, many corporate lawyers called last year “the year of the accountant.” A few years back, it was the environmental area that suddenly became important. Seemingly out of nowhere, environmental problems came to the fore. Every transaction that you worked on had a huge environmental component, and it was very important for a corporate lawyer to have a good basic understanding of environmental law.

In the process of understanding the client's perspective, it's important that a corporate lawyer find out what his client worries about. What keeps the senior management up at night? What could go wrong? What risks does the business enterprise face, such as from competitors or the economic environment? I have found that clients really appreciate it when you try to understand their business, the risks they face, the forces they're subject to, and when you can talk their language. That's been very helpful to me in my career, and it has enabled me to be proactive, to anticipate issues and to warn clients about them — like the fact that the downturn in the stock market has created terrible problems for many companies with pension plan underfunding. You now are reading about companies having to put billions of dollars into their pension funds because of underfunding and the unrealistic investment return assumptions that they had been — and many still are — using. As a result of brainstorming internally about the possible consequences of the stock market collapse, talking with clients, and paying attention to early developments, we were able to alert a number of clients to the situation early on. Clients really appreciate that.

Creativity and Confidence

Creativity is another critical aspect of helping the client achieve its business goals. To be truly successful, you must be creative . . . to think “out of the box.” One of my partners, Ron Wilder, has been extremely successful in doing that. I recall a situation in which a big corporate client had a commercial lease that everybody said was unbreakable. Ron thought about it for a while, we brainstormed about it, and he came up with maybe ten theories, which would enable the company to get out of the contract. At the outset of the process, no theory was too silly to exclude. Then we did preliminary research on all ten theories. Three or four of them were discarded because they were so far off the wall that they just weren't reasonable. We winnowed the list down and came up with two or three that might work. We did further research on those legal theories and on the underlying facts and came up with something we thought would work. It really astounded the lessor that there was a reasonable theory by which we could avoid this onerous agreement. When we first called him, he laughed and thought it was ridiculous. He said, “It's a ‘hell or high water’ financing lease with a big bank that was written by a Wall Street law firm to be unbreakable.” We sent him a memo supporting our position, and he grudgingly gave us a lot of respect. Ultimately, the client was able to get out of this lease by making a payment of less than 10% of the \$4 million that

was due for the remaining term of the lease. Since then this client calls Ron whenever he has a difficult contractual issue.

In another situation our client wanted to acquire another company, and it turned into a hostile takeover battle. The target company had a “poison pill” — a nasty device that makes it very expensive to go forward with a hostile takeover. We took the time to analyze the poison pill in excruciating detail and found what looked like a way to avoid the adverse impact if we could get control of the company, change the board of directors and redeem the pill by 5 p.m. all on the same day. We went to the client and talked about what we had found and the risks involved. If it turned out that our approach was challenged in court, as it likely would be, and the judge found against us — and we would be before a judge in the hometown of the target company who might not be entirely objective — it would be disastrous for our client. The client had a reasonable appetite for risk and decided that if we had confidence in our reading of the poison pill, we should go for it. So we did. We mapped out something similar to a military campaign. One minute after midnight we closed our tender offer. We had people stationed in the courts in three different states poised to file and/or respond to lawsuits, and we had people at the securities depositories to get the stock that we had bought in the tender offer transferred and get proxies for that stock. We were able to replace the board of directors with new directors and redeem the poison pill with hours to spare. But you always need to work hand-in-hand with the client, making sure the client is on board, and that it's not the lawyer running the show. The client ultimately has to make the decisions.

What I'm trying to show with these examples is the importance of being creative and also being confident in your conclusion — feeling comfortable with yourself and the advice you're giving, and having some measure of boldness to take risks to achieve a result

Good Judgment, and the Difference Between Knowledge and Wisdom

Good judgment and problem-solving skills are related to creativity, and some people are just better at that than others. I see many brilliant young lawyers come out of the best law schools in the country. If you look at their academic records and test scores and talk to them, they're as smart as whips — but not all of them become great lawyers. One reason is that it takes good judgment and problem-solving skills and some of the other things I

mentioned to become a great lawyer in any field, not just corporate law. I call this the difference between having knowledge and having wisdom.

Acquiring wisdom as a lawyer takes a lot of experience. When I came out of law school, I thought I knew a lot. I was disabused of that notion quickly. One thing I learned is that you can have a lot of knowledge, but the ability to apply it, the ability to solve problems and exercise good judgment, comes with experience.

There's no easy way to get experience and develop good judgment. Obviously, it takes time to gain experience, and much of the essence of good judgment is either developed (or not) before you ever become a lawyer. Understanding the client's perspective can help. Thinking ahead and considering the likely implications of your advice is important. It's like a chess game where you must think many moves ahead.

The role of others in helping you develop good judgment is vital. I was very fortunate to have close mentoring relationships with more senior lawyers who were great teachers and role models. People like Keith Shay and Milton Cohen — senior partners at Schiff Hardin LLP when I started with the firm — took me under their wings and nurtured my development as a lawyer. They both were nationally recognized corporate lawyers who took the time to mentor me. Not only could I learn from watching them in action, but I could test my tentative judgments against their seasoned experience. At first, we would reach decisions by consensus; as time went on, I gained more confidence in my own decisions.

More Thoughts for Success

To be a great corporate lawyer, you must listen to what your clients and others say. I remember somebody telling me, "You don't learn very much by talking. You already know what you're going to say, but you can learn a lot by listening to others." Taking the time to listen also lets you take the time to think about the issues you're dealing with. It is so easy to just react without thinking. There's so much pressure to do things quickly these days, in this age of instant communication. Someone emails you a 100-page document, and an hour later they expect your comments back. It is important to resist some of those pressures to the extent that you can and take time to think — that includes thinking about the bigger picture and not just the details. Sometimes you can get overwhelmed by the details.

I also see many lawyers who seem only to be trying to win points negotiating a transaction without really taking into account the bigger picture or looking for the win/win approach where both clients achieve their objectives. So many times it's as if they think there's a scoreboard someplace and someone's keeping track of how many points they won. Unfortunately, I have seen that more and more as the economy has turned down in the last few years. Transactions are harder and harder to get done — people are focusing on details and worrying about things that they never would have worried about before. Some things, they should be worrying about. Maybe they were too blasé in the past. The stock market was booming, money was easy to borrow, and companies were issuing their stock at maybe inflated prices; it wasn't so important to get, say, the best representations and warranties. Now people are more concerned. But the pendulum has swung too far in the other direction. From a financial point of view, I suppose it's good news for law firms but not such good news for clients, because we have to spend so much more time on every transaction and more deals are being terminated before they are consummated. You can raise issues about every provision in an agreement if you want, but you have to recognize what's important and what's not so important, and how to get to a good result for your client rather than winning points on each provision of the agreement.

Part of what I'm suggesting can be characterized as trying to become a partner with your client. Try to go out and visit clients as frequently as you can. Go out to their offices . . . out to their factories . . . try to attend board meetings. That's a good way to find out about them, learn what their issues are and what's bothering them — what the challenges are. It also shows clients that they are important to you and you care about them. The general counsel of a company told me a few years ago why he picked our firm to handle a very important matter, rather than a large Wall Street firm. He said, "Both firms have great lawyers, but I know that we will be a much more important client for you and your firm than we would be if we went to the Wall Street firm, and I like knowing, for example, that when you're taking your morning shower and thinking random thoughts about the day ahead, you're going to be thinking about me and my problems rather than about some other client."

I learned very early in my career the importance of teamwork. I couldn't do it all by myself — not only because I was certainly not an expert in every area of the law, but because no one person can think of everything. It is so important to have teamwork and to be practicing in a law firm or legal department where there is a spirit of

teamwork. For example, brainstorming often is the best way to solve tough legal problems. My partner Milton Cohen used to talk about “sharing” difficult legal problems. He had a national reputation as an expert in securities law. He really was responsible for the whole framework of what’s called the “integrated disclosure system” of the federal securities laws. When he had a tough legal problem, he would call in some of the best lawyers we had in the office and brainstorm. It made me realize how important it is to bring other minds to bear on difficult issues. That’s not always easy in every firm. One thing I love about my firm is that it has a culture where that’s very important. People aren’t so worried about their own clients that they’re reluctant to spend time to help other people.

Also, in terms of teamwork and client service, my philosophy is that we don’t need to just meet the expectations of our clients but to exceed their expectations. I work very hard making sure we give superb service to our clients. Clients pay a lot of money for legal services; they want first-rate service, but they don’t always get it. One of our big jobs is to see that they do get it . . . and get it on a timely basis. (As an aside, great advice that’s delivered too late may be totally worthless — certainly not as good as not-quite-great advice that’s delivered on a timely basis.) I read an interesting book a couple of years ago called *Raving Fans*. The thesis of the book is that the goal of any business, whether it’s Wal-Mart or a law firm, is to make its customers into “raving fans.” It means trying to make your clients enthusiastic fans of your firm — people who have such a positive experience that they want to call you when they have legal matters and will recommend you (rave about you) as a lawyer to others. This again brings me back to the importance of thinking about things from the client’s perspective, for that is the only way to know what you need to do to give your clients such a positive experience.

Special Advice to Young Lawyers — Passion for the Law

My primary advice to a young lawyer is to find your personal strengths and build on them. You can also work on your weaknesses, but your strengths are what are really going to make you successful. You should think about what they are, figure out how to make the best use of them and build on them. Related to that, I think of passion. Passion may seem an odd word for corporate lawyers, but I’ve always thought that if you love your work, it’s not really work and you’ll do a much better job. Something I read recently seems pertinent: Figure out what you love to do

and then figure out how to make a career out of it. For people who choose the law as a profession, there are many different kinds of lawyers and many different kinds of law to practice; hopefully, there is some aspect for which you really have a passion. You ought to figure out what that is. It is likely that it will involve your personal strengths.

When I was summer associate many years ago, the firm took us to court to see some of the great lawyers of the time in action. I was really amazed at how different they were. They each had different strengths and weaknesses. Some were great orators (but some weren’t very good orators); some were great thinkers; some were great brief writers. The lesson for me was that you can find an area of the law and a way to use your strengths — no matter what they are — and become a successful lawyer.

The philosopher Martin Buber wrote about dramatic, flash-of-insight “I-thou” moments. In the practice of law, we too have an I-thou moment. You start out thinking of yourself as distinguished from your law firm or company, which is “they.” “They” are making decisions; “they” are giving you assignments and setting deadlines, and so on. At some point, I remember starting to think of the firm as “we” rather than “they.” I was a part of it; I was responsible for the client services. It just wasn’t someone else asking me to do something, or someone else’s deadline being imposed on me. If you want to be successful, you should be trying to become a part of the firm or company you’re working for - to be thinking about it in terms of “we” rather than “they.” I think this dovetails with my earlier advice about understanding the clients’ perspective so that you can be a partner with your clients and also think about your clients in terms of “we” rather than “they.”

Finally, if you really want to find personal satisfaction as a corporate lawyer, you need to have a higher purpose than just wanting to make money. You have to believe in what you’re doing and believe in the law. It may be old fashioned, but you should think of the law as a noble calling, with lawyers providing services that are valuable to society and acting as officers of the court responding to ethical rules that are above the norms of what the marketplace would require. John Waldron, one of the senior partners when I started with the firm, was so objective and ethical that when he was negotiating a contract and there was a difficult issue, the lawyer on the other side would sometimes say, “Let’s ask John what he would propose as a solution to that,” and be willing to accept his proposal, even though he was representing the other side of the transaction. I don’t know if that works today, but it was an ethical standard which we all looked up to as we grew up in our firm.

A Few Thoughts on Economic and Business Trends

As I look back over 40 years of practice, and also try to look forward, I think that there are long trends. The pendulum swings back and forth . . . usually too far in one direction and then too far in the other direction. I have seen stock market booms and busts, periods of time when there were initial public offering booms and other times when maybe for eight or ten years nobody was going public because no one was buying stock in IPOs. We as lawyers have to think about the bigger picture and about the trends. With all the accounting scandals and bankruptcies of first the dot-com companies and then the energy trading and telecom companies, and calls for government regulation (like the Sarbanes-Oxley Act that was adopted hurriedly last summer), you see the pendulum swing too far; the unintended consequences already are starting to occur. One of the pundits quipped about the Sarbanes-Oxley Act that business executives should be happy that none of the congressmen proposed lynching as one of the penalties for violating the act, because it probably would have passed unanimously. I think we have begun a long-term trend toward more and more regulation of corporations in general, with more of that regulation occurring at the federal level. Traditionally, regulation of the internal affairs of a corporation has been by the state of incorporation. Now with Sarbanes-Oxley and new and proposed SEC regulations, we are seeing a move toward more federal regulation. Unfortunately, all this regulation will have unintended consequences that businesses will have to deal with for many years, all of which will create more work for corporate lawyers and give them more influence in corporate decisions.

About the Author

Stuart L. Goodman concentrates his practice in corporate and securities law and heads the firm's practice group that includes these areas.

He has broad experience in all aspects of representing both privately and publicly owned corporations, with an emphasis on mergers and acquisitions, takeovers, public and private financing, disclosure issues and other 1933 Act and 1934 Act matters, as well as crisis management, internal investigations and counseling of corporate management and special board committees regarding the multitude of complex issues they face. Representative clients include AAR CORP.; American Country Holdings, Inc. and American Country Insurance Company; Anixter International, Inc. and Anixter Inc.; ARRIS Group, Inc.; Canadian National/Illinois Central; Intermatic Incorporated; Newell Rubbermaid Inc.; and State Farm Insurance Companies.

An example of his work for a particular client is his relationship with Newell Rubbermaid Inc., for which he has been the principal outside counsel for more than 30 years. During that period, among other things, he has helped Newell implement an acquisition strategy (and related financing) by which it made more than 100 acquisitions and grew from a family owned company with annual sales of approximately \$30 million to a publicly owned Fortune 500 company with annual sales of more than \$7 billion. He has been involved in planning, structuring, negotiating, and documenting acquisitions of almost every type, many of which have been extremely complex and on tight timetables. He also has helped develop a system for handling smaller acquisitions on a cost-effective basis.

Goodman has served as chairman of the Chicago Bar Association Securities Law Committee and chairman of its Subcommittee on Tender Offers, Proxy Contests and Going Private Transactions. He is a member of the Section of Business Law (and the Committee on Federal Regulation of Securities and Subcommittee on Proxy Contests and Tender Offers) of the American Bar Association. He has spoken and presented papers at numerous seminars, including the Fifth, Sixth, Ninth, Eleventh, Twelfth, Nineteenth, and Twenty-Second (2002) Annual Ray Garrett, Jr. Corporate and Securities Law Institutes, covering matters such as disclosure issues, financing, mergers and acquisitions, takeover strategies, SEC developments, the business judgment rule and decisionmaking by directors in times of crisis. He served as chairman of the Executive Committee of the Garrett Institute from 1991 to 1993.

Goodman received his undergraduate degree (B.A., *with highest honors, and distinction in political science, Phi Beta Kappa, Bronze Tablet, Junior and Senior Activity Honorary Societies*, 1960) from the University of Illinois and his law degree (J.D. *magna cum laude*, 1963) from Harvard Law School, where he was a member of the Harvard Law Review.

He is admitted to practice in Illinois and before the United States District Court for the Northern District of Illinois.

INSIDE THE MINDS: The Corporate Lawyer

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Stu Goodman — I'd like to dedicate my chapter to Keith Shay and Milton Cohen, great lawyers and teachers who took the time and made the effort to help me become a corporate lawyer.