Three Rules for the 21st Century Lawyer– A View from Two Worlds

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I. Introduction

What is the state of the relationship between in-house and outside counsel? Has it truly changed over the last few decades? There is no doubt that both sides need each other. Law firms need clients. And corporate clients need quality services from outside counsel more now than ever. Though there may have been some dip in demand for legal services in the recessionary years, the fact is that there now are more deals, more government investigations, more litigation, more compliance and employment-related matters, and more changes in the law within the United States and beyond. However, this higher demand for legal services has intersected with the growing pressure to reduce legal costs. Therein resides the tension of competing objectives.

In the face of this escalating demand, corporate clients are searching for imaginative ways to achieve more predictable and efficient mechanisms to pay for these services. Alarmists in the crowd will proclaim that this has changed the practice of law in revolutionary ways. But that is the overly-strident view. The core feature of the attorney-client relationship has remained intact—a client hires a lawyer to represent its interests in a matter, and the goal is to achieve an outcome in the best interests of the client for a reasonable cost. That has been true since lawyers were paid with sacks of potatoes for the legal work they did.

For law firms, seeking and retaining clients is the critical aspect of success. There has always been an ebb and flow in business as clients replace old firms, add new ones and shift allegiances when new leadership comes into legal departments. No doubt, the trend has been for clients to use fewer firms to do their legal work. Some of that is cost-driven. Providing more work to a single law firm creates opportunities for volume discounts, and that law firm is incentivized to provide more cost reductions when a significant amount

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of work is involved. Furthermore, for the in-house legal department, managing fewer law firms is easier than managing many because the corresponding burden is decreased for its litigation managers. It is also helpful and cost-effective in some instances for a single outside law firm to oversee related litigation or transactional work across certain geographies. Finally, because knowledge of the client's business and personnel is important, having that institutional knowledge invested in fewer firms inures to the best financial and strategic interests of the client.

Despite the trend to have fewer firms handle the bulk of their legal matters, most corporate clients hire new lawyers on a regular basis. There are always new matters in areas where local representation is required or desired. Some clients are reluctant to become too dependent on a few firms who then have the leverage to push their own interests in the negotiations regarding compensation. In other words, opportunities exist for law firms that do not represent a particular client to acquire business from that client. The burning question is how might they get under the tent and make a play for that client's work?

To begin with, you have to be pretty darn good at what you do. Amidst all the angst and debate about the future of the practice of law, there is one abiding principle—quality counts. And quality is measured by accomplishments and performance. Good lawyers get more business than bad ones. That will not change.

Another truism is that costs count. Great lawyers can price themselves out of most of the legal market. During the recessionary years, many companies faced challenges to their top revenue line as demand and prices were reduced. That, in turn, put pressure on expenses. As part of the annual planning process, every corporate function, including the legal department, faced budgetary constraints. The legal department had to find ways to control outside counsel spend to meet its budgetary commitments. That created a tightened

squeeze on law firms, many of whom responded by providing cost concessions. For many companies, outside counsel legal spend did go down. Some of that may have been attributed to cost-reduction agreements with outside law firms, but much of it was attributed to reduced merger/acquisition activity, improved internal management of outside firms and an increased tendency of companies to settle cases earlier rather than incur significant attorneys' fees and discovery costs. Today, costs continue to be a factor in any decision whether to hire or retain an outside law firm. That has long been an historical fact, but recessionary years made it a strategic imperative for corporate clients.

Rather than dwell on history, let's look to tomorrow and into the 21st Century. Though some things have remained the same and some have changed over the past several years, the successful law firm of the 21st Century must know how to market itself to potential clients and get new business. There is no magic elixir. It is important for law firms to understand that many disparate factors drive hiring decisions. The caveat here is that no company is like all others, and different considerations come into play for various companies. However, as noted, the same general considerations predominate as much now as they have for an eternity—every client wants a lawyer who can achieve an outcome in the best interests of the client for a reasonable cost. The rest is all about details.

And finally, remember this—the old adage that clients hire lawyers and not law firms is as true now as it ever was. With the growing consolidation of law firms, many clients will work with a tiny fraction of a law firm's attorneys. The reputation of the law firm means nothing to the client if its attorney is doing a poor job on the assigned matters. The successes of the law firm on other clients' matters mean nothing unless the outside counsel you hire was instrumental in those successes. Law firms need to get over the notion that they can attract and retain a particular client's business by glorifying everything that the law firm can do. Effective law firm marketing is segmented so that the qualities and characteristics of the relevant individual lawyers predominate. Fancy, colorful law firm brochures may serve as an introduction but are never the vehicle for hiring decisions.

So, yes, some things have changed and other things have remained the same. That will continue to be true. With all the vicissitudes and uncertainties in the practice of law, what will it take for a lawyer to thrive in the 21st Century?

II.
Three Rules for the 21st Century Lawyer

A. *Rule #1—Figure out a better way to get paid for the services you provide.*

The billable hour system has not been around forever, but most lawyers practicing today grew up in that system. The ethical setting of a reasonable fee over the years has implicated a number of factors, but the amount of time a lawyer spends on a matter became the most critical factor in the 1960's when many law firms were billing clients on an hourly basis.[1]

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[1] A.B.A. Commission on Billable Hours Report 2001-2002, 3 (2002), available at http://ilta.personifycloud.com/webfiles/productfiles/914311/FMPG4_ABABillableHours2002.pdf.

As time passed, law firms expected their attorneys to bill more hours per year and the hourly rate moved inexorably higher. Clients demanded to know who did their work, what they did and how much time they spent. That led to detailed statements incorporating scrupulous timekeeping by outside counsel and significant review by in-house counsel. Even before the 2008 recession, clients were clamoring for a better way to pay for legal services, seeking to mitigate the ever-escalating legal costs and thirsting for consistency and predictability.

And lawyers themselves were joining the chorus. In a 2007 article in the American Bar Association Journal, noted novelist and attorney, Scott Turow, authored an article entitled, "The Billable Hour Must Die." The thesis of the article was that the billable hour system rewards inefficiency, creates client suspicion and may be unethical. In the last paragraph, Turow states:

> If I had only one wish for our profession from the proverbial genie, I would want us to move toward something better than dollars times hours. We have created a zero-sum game in which we are selling our lives, not just our time. We are fostering an environment that doesn't provide the right incentives for young lawyers to live out the ideals of the profession. And we are feeding misperceptions of our intentions as lawyers that disrupt our relationships with our clients. Somehow, people as smart and dedicated as we are can do better.[2]

This damning indictment of the billable hour highlights why it is so pernicious—it has become a foundational element of the practice of law. Not only is it used to measure how much a client should pay, it is being used to track how hard lawyers are working and to set law firm compensation. Those who cannot "keep up" are often punished financially or forced out of the practice of law without regard to their talents as lawyers. If the billable hour disappears as a measure of producing revenue, how can law firms determine how much to pay their lawyers?

With all the acclaim that the billable hour must die, law firms and clients alike have been grasping at a whole host of "alternative" options, from contingent fee arrangements, alternative fee arrangements, fixed and flat fees, to blended rates. Some of these arrangements have been successful and extolled by clients and outside counsel alike because they carry no remnant of the hourly rate, and predictability in legal costs is achieved. However, many of these alternative arrangements have at their core some semblance of the persistent billable hour. For example, law firms need to know how much to charge the client so they figure their "alternative" fee by estimating how much work is expected to be done, who will do it, how much each attorney charges per hour under the internal rates, and multiply all of those numbers. This sounds a lot like "dollars times hours." But clients compound the problem. They want proof that the law firm is actually putting in the work to justify the fee,

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[2] Scott Turow, *The Billable Hour Must Die*, A.B.A. J., Aug. 1, 2007, *available at* http://www.abajournal.com/magazine/article/the_billable_hour_must_die.

so they may insist on receiving "shadow bills," which look very much like the traditional statements for hourly rate work. In-house resources are then expended in the review of these shadow bills. And if you add a collar, it begins to look and feel like the good old days because the amount paid to a law firm is driven by statements reflecting how much hourly work is done by the law firm.

Changes have been demanded. The Association of Corporate Counsel (ACC) has championed its "Value Challenge," which it describes on its website as follows:

> The ACC Value Challenge is an initiative to reconnect the value and the cost of legal services. Believing that solutions must come from dialogue and a mutual willingness to change, the ACC Value Challenge is based on the concept that law departments can use management practices that enhance the value of legal service spending; and that law firms can reduce their costs to corporate clients and still maintain strong profitability. The ACC Value Challenge promotes the adoption of management practices that allow all participants to achieve their key objectives.[3]

There is nothing here that suggests a billing system based on hourly rates. The key is calculating "the value of legal service spending." Value is not reliably determined by the amount of time that lawyers spend on a matter. Value is measured by outcomes, expediency and a host of things disconnected from how many lawyers spend how many hours on a client matter.

One problem with the hourly rate is that it does not correspond to the language of corporate clients. Corporations are in the business of providing value to shareholders, which means they must deliver profitable returns at least consistent with forward-looking guidance. In determining profits, corporations look at their total revenues and expenses, and they then calculate their profit margins and operating income in that bridge between what they bring in and what they pay out. None of their expenses incorporate an hourly rate for the work they do. They pay employee salaries and show that as part of a line-item expense, but they do not apply an internal hourly rate calculation for any purpose. For most of their outside vendors, they pay flat fees that cover an entire project and are not tethered to hourly rates. Incentives are provided for early and successful completion of the project. So, when law firms propose an hourly rate structure or an alternative fee arrangement that is largely founded on a "dollars times hours" algorithm, it just doesn't resonate with corporate clients.

Let's apply that to the in-house law department context. In-house litigation management attorneys spend their days working with outside counsel, reviewing documents, editing briefs, discussing strategy and attending depositions, hearings and trials. Working side-by-side with outside counsel, the in-house attorneys do many of the same things as outside counsel. Yet, in-house counsel "value" is not connected in any way to hours billed. Their compensation

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[3] ASSOCIATION OF CORPORATE COUNSEL, http://demo.acc.com/valuechallenge/about/index.cfm (last visited Apr. 21, 2015).

is fixed and set early in the year, hence it is predictable. It is based on the attorney's past and expected performance as well as peer comparisons. That is the measure of "value" to which the company assigns a dollar amount calculated by base pay, bonus and equity. Let's do a little math. If an in-house counsel's total compensation packet is worth $250,000 and we assume the equivalent of 2,000 hours of work per year, that translates into an hourly rate of $125. Most in-house litigation attorneys work far more than 2,000 hours. The same calculation could be done for in-house attorneys doing merger/acquisition work, employment counseling, internal investigations and the like.

Of course, outside counsel is not employed by the client so the concept of employee compensation is not a perfect match. However, the determination of what constitutes "value" is not dramatically different. A win is a shared accomplishment by in-house and outside counsel. How dramatically different is the compensable "value" assigned to these roles?

The premise here is not that outside counsel should be billing in the sub-$200 an hour range. Rather, it is to display the disconnect over how value is differentially defined by in-house and outside counsel. The billable hour is an inefficient, archaic and dis-incentivized way to reward value for outside counsel. Clients want and expect their outside counsel to make a profit off of the value they deliver. The issue is how much and how do you define that value. Let's assume a sole practitioner wants to earn $1 million a year in total compensation. And let's assume that the overhead or cost structure for that firm is $200,000 a year. With a fair degree of conviction, let's assume that a client's work was going to take half of that lawyer's time. Wouldn't it be fair for the client to pay the lawyer $600,000 throughout the course of the year, representing half of the lawyer's desired income and overhead, a sum unrelated to an hourly rate or whether that lawyer works 2,000 or 3,000 hours a year? If that lawyer had an associate and the client needed 25% of that associate's time, couldn't a similar calculation be done? Once the baseline is determined, adjustments could be made if the workload assumptions proved inaccurate. Alternatively, outside counsel could calculate a fee arrangement that delivers profits the way to which corporations are accustomed—after factoring in all expenses, how much revenue must the firm bring in to achieve a predetermined profit margin without factoring in an "hourly rate" value for employees?

This "top down" approach to setting fees is often unworkable because lawyers do not go into each year with a preconceived notion of how much money they want to make. And the impediments are even greater for larger law firms where expense allocation is difficult to predict or to set. But that is not the point of the analogy. The point is that how much a lawyer/law firm makes should not be driven by the hours they put into a matter divided by an arbitrary hourly rate. It should be driven by more realistic and efficient concepts of value that permit the lawyer/law firm to achieve a reasonable profit margin in the context of outcomes delivered. That is how corporations do it.

Over time, the reference to hourly rates in the context of fee negotiations will inevitably be eliminated. It may be a slow death, but death is assured. Clients do not like the algorithm based on "dollars times hours." Nor do they like reviewing bills—whether real or shadow—because that takes time and makes in-house lawyers less efficient. The successful 21st Century lawyer will come up with something better, and clients will reward that lawyer

for that. For example, the financial relationship between outside counsel and the client could be constructed in this fashion:

1. There should be early discussions about how much work the case is expected to take and who in the law firm should do it. Perhaps the case will require a large team or, in some instances, a single associate. A preliminary strategy must be discussed, based on certain assumptions and expectations.

2. Distinctions should be drawn between the various tasks that law firms are expected to perform. At the purest level, clients want the time, attention, strategic input and performance of experienced attorneys. But think about all the things that law firms are asked to do—review and analyze documents, conduct legal research, prepare legal memoranda, draft correspondence, analyze problems, engage in strategic planning and handle depositions, hearings and trials. How many of these tasks are commoditized and do not require years of experience? In other words, all the things that law firms are asked to do are not created equal. A client might be willing to pay for the hours a senior, experienced lawyer spends on a significant matter, but why should commoditized work be valued on an hourly rate basis? In this instance, one size does not fit all, and the law firms of the future will submit proposals where the commoditized work, and even the high-level strategic work, becomes completely divorced from the "dollars times hours" construct.

3. Create a baseline flat-fee arrangement that fairly reflects the "value" expected to be delivered by the law firm for all of the tasks the law firm is expected to perform. There should be no discussion of hourly rates, and any presumed hourly rates for the lawyer(s) doing the work should not be a factor. And here is the heart of it—there will be enough trust in the relationship that adjustments can be made in the event the early assumptions prove to be in error.

4. There should be no monthly budgets or bills. Instead, the law firm would provide the client with a monthly report of who did what (without hours or other details), what went well or not, and any recommended changes in the strategy going forth. This monthly report would reassure the client that its matter is getting appropriate attention by the key players in the law firm. The report also would promote constant collaboration between in-house and outside counsel on the work that should be done and whether the strategic approach to the matter should be modified.

5. The law firm and client should determine in the first instance how value is defined. If the goal is to resolve the matter quickly, that outcome should be rewarded. If the expectation is that the matter will have to be tried, but it is resolved earlier in a satisfactory way, that outcome should be rewarded. Just as general contractors are compensated for completing construction projects earlier than planned, so too should law firms be incentivized to deliver earlier successful outcomes. In other words, we should financially incentivize efficiency and early wins rather than long, dragged-out battles.

At the end of the day, true "value" is not determined by the anachronistic notion of how many hours law firm personnel apply to a case. It is determined by outcomes and the speed at which a matter is resolved. It may be counter-intuitive that the most valued law firms get rid of matters quickly, but those firms will continue to get more work because of the value

they deliver. It is time for greater imagination on behalf of both law firms and clients. There is a better way to do this. And the law firms that crack the code of defining their value and putting a mutually satisfying price tag on it will thrive in the 21st Century.

B. *Rule #2—Be true strategic partners with the client.*

Lawyers are, by trade, exceptional tacticians. That is what is expected of them. You give them a matter, and they will figure out how to navigate the whitewater straits to an acceptable ending. They will dig into the details, understand the law, apply their legal learnings to the facts of the matter, and execute well to a successful outcome.

When you look at the intersection of in-house and outside counsel, you see common features. Both participate in the strategy discussions on how to handle a matter. They jointly "manage" the matter, making midcourse adjustments and watching resources and costs. They work together to get the facts, from internal and external sources, to enable informed decisions. So, whether negotiating a deal, overseeing litigation or managing an intellectual property portfolio, the in-house and outside counsel are in regular contact and hopefully synchronized on the strategic course and tactical details needed to accomplish the desired outcome.

However, at some point, their roles diverge in marked ways. Let's take litigation as an example. Most corporate law departments have experienced litigation managers. What are the key attributes of an effective in-house litigation manager? Here are some of them: (1) know the business; (2) understand the strategic objectives of the company; (3) look out for the best interests of company employees by minimizing disruption to the commercial engine of the company; (4) ensure that litigation is managed in a way that mitigates risks and protects the reputation of the company; (5) be legal advisors to senior management and the board of directors; (6) set appropriate litigation reserves; (7) control litigation costs; and (8) win. The in-house litigation manager has to be a skilled litigator but must also wear a business hat because that is the environment in which he or she operates.

What are the primary attributes of outside litigation counsel? Among them are: (1) know the case; (2) understand how the client defines "success" on a particular matter; (3) get as much information as you can from internal sources, like employees and documents, so your advice is adequately informed; (4) do what is necessary to protect the business and reputational risks of the company; (5) answer questions from in-house counsel on costs, risks, reserves and the like; (6) handle discussions with opposing counsel; (7) conduct legal research and document reviews; (8) take depositions; (9) handle hearings and trials; and (10) win. The outside counsel typically wears much more of a litigation hat than a business hat.

The disconnect and, in some instances, the duplication between what in-house and outside counsel do has driven some companies to in-source their legal work. In other words, they create their own internal law firm. They hire lawyers into the law department to try their cases and, on their own, handle deals, employment claims and other matters typically referred to outside law firms. FedEx Corporation, for example, maintains a staff of in-house litigators who handle cases directly from start to trial. There are several reasons why a company might do this. One, of course, is efficiency. If you can create a team of hybrid business/litigation

lawyers by merging all of the above roles of in-house and outside counsel into a group of internal lawyers who can be managed as a single unit, you are getting the best of all worlds under one umbrella. Another reason is to save costs. You can cap, or at least better predict, your legal spend if you have salaried employees handle most of the legal matters on a non-hourly rate basis. This model is also helpful because in-house counsel know the business, the substantive legal principles at issue, and the key internal players. This saves money because the company does not have to educate outside counsel on the statutes, regulations, laws and internal structures that in-house counsel deal with every day. And shifting strategic courses can be readily identified, discussed and pursued rather than conveyed to outside counsel for execution. There is no "transition" required from in-house to outside counsel because the corporate law department is serving as its own outside counsel.

Despite the advantages, there are disadvantages to creating your own internal law firms. There is often an ebb and flow to the legal work that a company must handle. When you rely on a law firm, you can more easily accommodate changing demands for legal services—you use them for however long you need them and stop when you don't. If the company hires internal resources, it is harder to calibrate the resources to the often unpredictable demand. Variable costs become fixed costs. And, no matter how much legal work is in-sourced, you will likely still require outside local counsel to advise and assist on certain matters, which adds to the internal costs.

What does all of this mean for the 21st Century lawyer? It means that an outside lawyer needs to think more like an in-house counsel, to know what in-house counsel knows and be as attuned to the business strategies as he/she is to the legal strategies. The 21st Century lawyer should read what in-house counsel reads—company press releases, proxy statements, annual reports, SEC filings and analyst reports. Know the business of your client. Go beyond "know the case" and move into a place where one broadly "knows the client." The 21st Century lawyer should know more about what in-house counsel does—setting reserves, applying accounting principles, figuring out what must be publicly disclosed and when, and managing reputational issues. That will allow outside counsel to think like an in-house counsel and provide knowledgeable legal support to the company. The 21st Century lawyer must be acutely aware of the pressures that in-house corporate counsel are facing—budgetary constraints, managing disruption and crisis management. By thinking and acting like an in-house counsel, the 21st Century lawyer will become a true "strategic partner" to in-house counsel.

"Strategic Partner." That has a nice ring to it. One of the common themes of law firm marketing is the capacity to "partner" with clients. That's what clients want as well. What does that mean? According to Merriam-Webster, one definition of "partner" is "to join or associate with another."[4] So, what does that mean? Simply put, in the legal context, it means that outside counsel is a natural and seamless extension of the in-house law department. There is a significant blurring of the roles between in-house and outside counsel.

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[4] MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/partner (last visited Apr. 21, 2015).

Here is the essential lesson for the successful 21st Century lawyer—become that natural and seamless extension of the in-house legal department. Think and be like an in-house counsel. Look after the long-term interests of the company, beyond an individual matter. Be keenly attuned to advancing the commercial and business interests of the client and seek to minimize disruption. Manage costs as though you were managing a law department budget rather than just a legal matter. You will elevate your standing in the eyes of the client. You will make the life of the in-house counsel easier. You will distinguish yourself from those lawyers who are mere tacticians. That builds a relationship that endures. And enduring relationships are the key to success in the 21st Century practice of law.

C. *Rule #3—Be a leader, not just a lawyer.*

The responsibility of law schools is to devise a curriculum to develop the lawyers of tomorrow. Because the lawyers of tomorrow will be handling legal matters, the historical focus of law schools has been on the development of legal skills—learning to research and analyze cases, mastering various substantive areas of the law, understanding the processes and procedures that lawyers need to navigate, and incubating practical skills like taking depositions, handling trials and arguing cases. Law firms then advance those skills by exposing associates to deposition and trial training programs and providing them practical experiences. All of this lays the foundation for young lawyers to become better lawyers over time and handle cases more successfully. That is important to clients because the ability to handle cases and win is a critical component of the attorney/client relationship. That has been true since the dawn of legal time.

However, there are lawyers all over the world who can take a case and do a workmanlike job handling it. As noted, it has been argued by some that the practice of law has become commoditized, and that is certainly true when it comes to more routine matters. On the important strategic matters that experienced lawyers are often asked to address, there is no doubt that some lawyers are better than others. However, the range of good legal advice one gets from various experienced outside counsel does not have a huge standard deviation. Any incremental advantage in that regard is difficult for the "better" lawyer to prove and market.

What will be the key differentiator in the 21st Century? It is something often under-emphasized by law schools and under-valued by law firms. It has less to do with what lawyers do than what they are. It requires measuring the attorney not just as a lawyer but also as a person. It focuses on how that lawyer treats people, carries himself/herself and inspires respect. It is about approaching challenges with humility and operating with an "us" rather than a "me" mentality. It is a simple concept with life-changing potential. It is called leadership.

There is significant interaction between outside counsel and in-house counsel, and only a small proportion of that interaction takes place in the courtroom where the outside counsel display critical legal skills. Most of the interaction takes place during phone calls, informal meetings and the day-to-day strategic management of a case. It is in that setting where impressions are formed and relationships are built. It is undeniable that, in selecting

or retaining outside counsel, performance counts. But equally weighted are the intangibles like connectivity, likability, and all the other things that go into building a personal and professional relationship. In other words, is that person just a lawyer or also a "lawyer leader?"

So, what is leadership? Leadership eludes definition, despite the thousands of books and courses that purport to describe it. There are few resources that paint a clear picture of what makes a lawyer an effective leader. It is clearly more than law school performance and the number of jury trials or deals completed. It is far more intangible. But what are those intangibles? Here are five important leadership criteria that the 21st Century lawyer should aspire to achieve:

1. *Display executive presence and communicate well.* "Executive presence" may be as hard to define as the word "leadership," but you know it when you see it. It is the ability of a person to walk into a room and command attention. It is not the loudness of the voice or the sharpness of the outfit. It is an effortless presence manifested by engaging others, showing an easy conversational style and unexpected humility, listening attentively to others, sharing ascendant insight and exuding a quiet confidence. It is not just charisma because it is far more substantive. Others enjoy being with people like this. Colleagues in the law firm want to work with such a leader. Prospective clients want to hire outside counsel who have executive presence. Executive presence also implicates the ability to communicate effectively. It is axiomatic that great trial lawyers communicate well in the courtroom—with jurors, the judge and even witnesses. However, lawyers communicate far more often outside the courtroom than in it. They attend meetings, give presentations, participate in conference calls and interact with others in all types of settings. True leaders have mastered the art of impressive and persuasive communication. It involves listening as well as speaking. It is an easy, unforced conversational style untethered to PowerPoint slides and notes—getting to the point without belaboring it, speaking with inflection and pace, using movement and hand gestures to emphasize points, and sprinkling in illustrative examples and, yes, even some humor. Leaders, in their communications, sell their points and themselves. Clients notice. Cast aside the notes, slides, ponderous speech style and unprepared chatter. Make listeners go "wow!" and leave them with an indelible impression.

2. *Be accountable and calm in crisis*. The practice of law does not take place in a perfect world. Not everything will go as planned. There will be unexpected successes and more than a few disappointments. And the disappointments sting. Outside counsel must understand that there is an internal accountability within corporate law departments. Senior management relies on the strategic judgment and assurances of in-house litigation managers, just as in-house litigation managers rely on the considered judgment of outside counsel. Outside counsel needs to subscribe to the litigation strategy and accept the consequences of its failure. The accountable leader shares successes with the team but personally and singularly accepts responsibility for failure. This is equally appreciated by the internal law firm team and in-house counsel. In those chaotic moments when things look dim, the leader slows things down and comforts others, inspiring a sense that despite the setback, everything will work out without engendering false optimism. Nothing is more discouraging to a team or client than a leader who has lost hope or run out of ideas. It is in those moments when true

leaders inspire others to the possibility of better things to come by their demeanor, tone of voice and calmness of purpose. Anyone can lead in the good times. It is the true leader who excels when things do not go as well as expected. In challenging times, the leader builds excitement about the successes of tomorrow. Be that leader.

3. *Be courageous*. No one wants to fail. For lawyers, failure may mean loss of business, revenue and reputation. The fear of failure may provoke conservatism where risk discomfiture is traded for the safe and easy way out. That is a bad trade-off for the client. The antonym of courage is timidity, and who wants a timid lawyer? One cannot live life in fear of bad things happening. Most fears are not realized, though they seem so real in the darkness of night. For lawyers, courage means the case does not get worse for the client every day it gets closer to trial. It means sharing with clients an imaginative and potentially game-changing strategy that may work or not. The 21st Century lawyer is willing to take measured risks in consultation with the client, is aware, but not fearful, of consequences, and displays an easy confidence that things will work out just fine. Leadership means one is not wedded to the status quo or the safe way out. One needs to take chances and inspire the team—including the client—to follow. It is as true in the law as it is in the military, politics, academia, business and all aspects of life. Be smart and courageous.

4. *Be a team-builder*. There is little we can do alone—in the law or in all walks of life. It is important for lawyers to build teams that perform together and achieve great outcomes despite the stress and uncertainty of the moment. The leader has to be surrounded by others with passion and talent. The job of the leader is to bring them together and make them excel. True leaders have the ability to attract talent. People want to work with them. True leaders retain talent. Once people are on the team, they feel valued and enjoy what they do. True leaders inspire others to places once thought unattainable. That requires broad strategic thinking, empowerment of team members, sharing successes, and a strong fabric that knits people together. The 21st Century lawyer must have the capacity to build strong internal teams in the law firm. Without that, the lawyer is destined to fail. But, think about the broad team that outside counsel must deal with while handling a legal matter. It includes opposing counsel, the judge, in-house litigation managers, outside consultants and experts, and non-legal staff at the law firm and the corporate law department. The 21st Century lawyer/leader is able to build personal relationships with all of these individuals, be respected, calm emotional conflicts, collaborate and persuade others to the wisdom of his or her viewpoints. Those are defining characteristics of the legal leaders of tomorrow.

5. *Be professional and civil*. Being professional is not optional for attorneys. It is an abiding requirement that, in many fronts, is honored in the breach. Too many attorneys approach litigation as warfare where "opponents" are seen as "enemies" and extending courtesies is perceived as "weakness." That mindset instills a culture of disharmony, one-upmanship, churlishness, confrontation and wasteful battles on matters unrelated to the merits at hand. That culture drains one's satisfaction in the practice of law.

There are ways to reign in unprofessionalism and incivility. Sanctions may help, but that is like trying to stop speeding by issuing more tickets. There is another more powerful

deterrent—clients. Corporate law departments, who send substantial legal business to law firms, should take a blood oath not to hire unprofessional lawyers to represent their interests. And, if a retained lawyer engages in unprofessional conduct, he or she should be fired. Period. Such an approach would advance the overarching interest of maintaining high professional standards for the practice of law, an important but only incidental benefit. The fact is that clients cannot afford unprofessional lawyers. They cost money with unnecessary motions, hearings and petty arguments with the other side. They compromise the client's relationship with the judge. They are generally unpleasant to work with in their own right, exhibiting a dearth of leadership skills. However, and perhaps more importantly, such lawyers interfere with the client's best interests and end game strategy. With only a fraction of filed cases being tried, it is likely that the client will have to sit down with the opposing party and seek to resolve a matter amicably. The odds of that process working are increased if there is a good relationship between the client's outside counsel and the opposing counsel. A history of anger, retribution and ill-will between them will sabotage the process to the client's disadvantage. It is a no-win proposition for the client, who expects its outside counsel to rise above the provocations and surpass the highest standards of good behavior.

The 21st Century lawyer is the paragon of professionalism and civility. That not only builds respect, but also a reputation. In-house lawyers want to work with outside counsel who make them proud and represent all that is good for this storied profession. We need to eradicate unprofessionalism. If we want to promote professional behaviors, it's time to do so by rewarding those who exemplify what we expect rather than just punishing those who don't. Corporate law departments have an important role in that regard.

These leadership criteria and all the rest of them—intellect, passion, work ethic, perseverance—can truly differentiate outside counsel. These comprise the buffet of characteristics that impress in-house counsel, or not. These build the critical relationships that become stronger over time, or not. And these make up the intangibles that convince clients to hire you as their lawyer, or not. The degree of bonding between an outside counsel and the client can be enhanced if the outside counsel displays true leadership capabilities. If outside counsel does not display those capabilities, the decision to separate from that counsel becomes monumentally easier. If you want a lot of legal work, learn how to be a leader and be one.

III.
Conclusion

The successful 21st Century lawyer will exhibit the skills to be an exceptional lawyer and so much more. The lawyer will focus less on historical accomplishments and more on what he or she is and can do. The lawyer will be a true strategic partner with the client. The lawyer will also be a good leader and person. The determining factor for clients is not simply "we can win with this person," but "this is a person who will help us win, and one we trust and who knows our business, is a leader with whom we are proud to associate and who requires minimum management." If all of that is there, the costs will take care of themselves.

The Federation of Insurance Counsel was organized in 1936 for the purpose of bringing together insurance attorneys and company representatives in order to assist in establishing a standard efficiency and competency in rendering legal service to insurance companies, and to disseminate information on insurance legal topics to its membership. In 1985, the name was changed to Federation of Insurance and Corporate Counsel, thereby reflecting the changing character of the law practice of its members and the increased role of corporate counsel in the defense of claims. In 2001, the name was again changed to Federation of Defense & Corporate Counsel to further reflect changes in the character of the law practice of its members.

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