

2017

Demonstrating Value to a Corporation as In-House Counsel

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Recommended Citation

Atherton-Ely, Zachary (2017) "Demonstrating Value to a Corporation as In-House Counsel," *Mitchell Hamline Law Review*: Vol. 43 : Iss. 5 , Article 3.

Available at: <https://open.mitchellhamline.edu/mhlr/vol43/iss5/3>

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DEMONSTRATING VALUE TO A CORPORATION AS IN-HOUSE COUNSEL

Zachary Atherton-Ely[†]

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I. INTRODUCTION

The stereotypes about in-house legal departments are well established: chief financial officers see the legal department as a cost center, marketing and sales departments see the legal department as a hurdle that causes delays and stifles creativity, human resources sees the legal department as the creator of verbose policies, and most everyone else becomes spooked by the presence of an attorney.¹ As these stereotypes persist, in-house counsel struggle to convince executives to invest in their departments.² During the budgeting

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1. Andrew Lu, *3 Ways for Corporate Counsel to Overcome Lawyer Stereotypes*, FINDLAW (Aug. 14, 2012, 5:52 AM), http://blogs.findlaw.com/in_house/2012/08/in-house-counsel-networking-within-the-company.html.

2. *Evolving Role of In-House Counsel: Adding Value to the Business*, GEN. COUNS. CONSULTING, <http://www.gcconsulting.com/articles/120280/73/Evolving-Role-of-In-House-Counsel-Adding-Value-to-the-Business/> (last visited Oct. 22, 2017) (“In today’s cost-competitive legal marketplace, some companies indicate that they are considering additional outsourcing, especially certain types of routine legal work.”).

process, general counsels frequently only receive two directives: (1) reduce in-house labor costs, and (2) reduce outside counsel costs.³ An underused third and more productive directive exists: grow the business.

Growing the business from inside a non-revenue generating department can be challenging. In-house counsel cannot simply sell their legal services to outside organizations. Fortunately, a growing trend in corporate leadership philosophy, “servant-leadership,” provides in-house counsel with a pathway to drive results. Moreover, in-house counsel are uniquely situated in an organization’s structure and uniquely trained to execute servant-leadership successfully.

II. SERVANT-LEADERSHIP

The concept of a servant-leader is simple but profound: “[t]he servant-leader *is* servant first.”⁴ The servant-leader takes care “to make sure that other people’s highest priority needs are being served.”⁵ Conversely, the opposite style of leader seeks to lead first and generally takes care to ensure that other people meet the leader’s highest priorities.

Servant-leaders have always existed, but coining the term is generally credited to Robert K. Greenleaf, who discussed servant-leaders in his 1970 essay *The Servant as Leader*.⁶ Greenleaf’s essay focused on the larger societal impacts of adopting the servant-leadership philosophy, but he was quick to note its application to the business world in subsequent writings.⁷ Greenleaf wisely predicted that servant-leadership faced a long road prior to becoming “a major society-shaping force.”⁸ However, as more businesses have seen the benefits of putting the theory into practice, servant-leadership has become more widespread in recent years.

Perhaps the most successful and most publicized implementation of servant-leadership in the corporate world started

3. *See id.* (“The internal legal function is now evaluated like other parts of the company. General counsel are held accountable for costs and effective management as well as the provision of quality legal services.”).

4. ROBERT K. GREENLEAF, *THE SERVANT AS LEADER* 6 (1970).

5. *Id.*

6. *Id.*

7. *See* ROBERT K. GREENLEAF, *SERVANT LEADERSHIP: A JOURNEY INTO THE NATURE OF LEGITIMATE POWER & GREATNESS* (1977).

8. GREENLEAF, *supra* note 4, at 4.

at Popeyes Louisiana Kitchen, Inc. (“Popeyes”) in 2007.⁹ Popeyes had been struggling for about a decade.¹⁰ Guest traffic was declining, restaurant volume and profitability were dangerously low, and the stock price had fallen from \$34.00 per share in 2002 to \$13.00 per share.¹¹ Poor performance led to few new restaurants opening and a growing tension between the company and its franchisees.¹²

Leaders in the food-service industry often focus on serving the customer. This strategy makes intuitive sense. The customers purchase the product, and they are more likely to become repeat customers if they have a positive experience. In 2007, Cheryl Bachelder joined Popeyes as its new Chief Executive Officer.¹³ Bachelder and her leadership team took a different approach: they made a commitment to serve Popeyes’s franchisees.¹⁴

Franchisors like Popeyes typically make money by collecting franchise fees and royalties on net sales. Bachelder recognized that as go the franchisees, so goes the franchisor. She made the conscious decision to serve the franchisees first, not the customers.¹⁵ By understanding and appreciating the needs of the franchisees and focusing on giving franchisees the tools and support they needed, Bachelder led Popeyes to a stunning comeback. As of 2014, restaurant sales had grown by 25%, the profitability of the restaurants had risen by 40%, and the stock price had climbed to over \$40.00 per share.¹⁶

Bachelder’s decision to serve the franchisees paid off. Perhaps most illustrative of that fact is that franchisees were able to remodel existing restaurants and invest in opening new restaurants.¹⁷ Bachelder’s focus on serving the franchisees gave them the tools and support they needed to provide a quick-service dining experience for which customers were willing to pay. This theme runs throughout the arguments in favor of servant-leadership: it leads to better results.

9. Jenna Goudreau, *The CEO of Popeyes Says Becoming a ‘Servant Leader’ Helped Her Turn Around the Struggling Restaurant Chain*, BUS. INSIDER (Mar. 24, 2015, 11:03 AM), www.businessinsider.com/popeyes-ceo-servant-leadership-traits-2015-3.

10. *See id.*

11. CHERYL BACHELDER, *DARE TO SERVE: HOW TO DRIVE SUPERIOR RESULTS BY SERVING OTHERS* 7 (2015).

12. *Id.*

13. *Id.* at 6.

14. *Id.* at 21.

15. *Id.*

16. *Id.* at 7–8.

17. *Id.*

III. THE ROLE OF ATTORNEYS IN COMPANIES LENDS ITSELF TO SERVANT-LEADERSHIP

Servant-leadership is not without its critics. Cynics may argue that servant-leaders “feel good” but that employees will inevitably take advantage of their services.¹⁸ Even if critics of the servant-leadership philosophy are correct at a company-wide level, the philosophy still merits consideration by in-house counsel.

In-house counsel fill a unique leadership role in a company. Traditional in-house counsel will have few direct reports, sometimes none.¹⁹ This lack of supervisory authority undermines counsel’s ability to lead through more traditional means; however, it provides a natural framework for servant-leadership to thrive.

In fact, rules governing the professional conduct of attorneys naturally push in-house counsel into the role of a servant-leader. As described in the American Bar Association’s Model Rules of Professional Conduct, attorneys fill the roles of advisor, advocate, negotiator, evaluator, and constant representative of the client.²⁰ Attorneys must “abide by a client’s decisions concerning the objectives of representation.”²¹ These professional mandates effectively push attorneys into the role of servants. Alternately, the duties of attorneys to “exercise independent professional judgment and render candid advice” while relaying legal, “moral, economic, social and political factors, that may be relevant to the client’s situation” also push attorneys into roles as leaders.²²

A. *Servant-Leadership in Practice*

Practicing servant-leadership can be tricky, but it is also an excellent way to demonstrate in-house counsel’s value to a company. Popeyes’s adoption of the servant-leadership model led to superior

18. This common criticism of servant-leadership ignores the ability, and even the duty, of servant-leaders to remove employees who consistently take advantage of the company. Servant-leadership does not imply that leaders must tolerate inappropriate or unprofessional behavior.

19. Julie Q. Brush, *I Am an In House Lawyer with No Direct Reports. How Do I Address This Issue When Interviewing for a Job That Requires Management Experience?*, THE LAW. WHISPERER BLOG (June 7, 2016), <http://www.thelawyerwhisperer.com/question/i-am-an-in-house-lawyer-with-no-direct-reports-how-do-i-address-this-issue-when-interviewing-for-a-job-that-requires-management-experience/>.

20. MODEL RULES OF PROF’L CONDUCT pmb1. 2 (AM. BAR ASS’N 2016).

21. *Id.* r. 1.2(a).

22. *Id.* r. 2.1.

results because its leader chose to serve the revenue centers.²³ Attorneys do not always have this luxury. In-house counsel must satisfy their traditional legal duties of reviewing and mitigating contract risk, ensuring regulatory compliance, defending litigation, and managing outside counsel, among other responsibilities. However, by truly serving the needs of the executive team, in-house counsel can satisfy their traditional functions while helping to grow the business.

B. Building a Successful Foundation

The first step all in-house counsel should take to adopt the servant-leadership philosophy is to establish relationships with the members of the executive team. A few exceptions notwithstanding, most attorneys do not have extensive operational expertise. Therefore, at least initially, most of the ideas as to how in-house counsel can add value to the company will naturally come from the operational departments. As trust and communication between in-house counsel and operational departments grow, all parties will generate and share more ideas.

Cultivating strong relationships with operational departments is not always easy. Many operational departments will begin with stereotypical views of in-house counsel.²⁴ Others may project poor past experiences with attorneys. Some people will inevitably be intimidated by the mere presence of an attorney and will put up walls. To overcome these barriers, in-house counsel must first acknowledge and accept that they exist.

Listening is the best way to begin leading operations teams through service. Before in-house counsel can serve an operational executive, they must collect an enormous amount of information. In-house counsel should learn what makes the executive tick: how the executive's department runs day-to-day; what challenges the executive faces; and the executive's successes, failures, hopes, fears, assets, and liabilities. Fortunately, attorneys are uniquely trained to successfully ascertain this information.

Meetings with operational executives are part client intake, part pre-trial preparation, and part trust-building exercise. Attorneys excel at critical thinking and analyzing issues from alternative angles. Although they may not know the nuts and bolts of an issue, they are

23. See Goudreau, *supra* note 9.

24. See Lu, *supra* note 1 and accompanying text.

trained to elicit the information they need to bring themselves up to speed. But soft skills cannot be ignored. In conversations with operational executives, in-house counsel should utilize what Stephen Covey has termed “empathic listening.”²⁵ Counsel should listen with the intent of understanding, not with the intent of immediately responding.²⁶

Admittedly, empathetic listening does not come naturally to some attorneys. The traditional law school curriculum consists of the ruthless Socratic review of case law. This method often encourages attorneys to begin formulating an opinion and a response prior to fully understanding a question.

Listening to the operational executive with the intent of understanding helps in-house counsel in two ways. First, it ensures that counsel have the information they need to speak knowledgeably about a topic and that counsel understand how to be of service. Second, it builds trust with the operational executive. Operational executives are unlikely to respond favorably to attorneys telling them what to do. Instead, executives will likely respond better to attorneys who are genuinely trying to understand the executive’s area of business in order to be a better resource.²⁷

C. *Examining How to Serve*

Operational executives know that legal departments do things like, for example, review contract terms, handle employment claims, and address compliance issues. They also understand that by performing these traditional duties, in-house counsel generally serve the business’s operations. Despite this general knowledge and understanding of in-house legal departments, negative stereotypes of in-house counsel persist. To break this mold, attorneys must put themselves in the operational executive’s shoes.

The “golden rule” instructs to “do unto others as you would have them do to you.”²⁸ Although this is a great rule, a more productive

25. STEPHEN R. COVEY, *THE 7 HABITS OF HIGHLY EFFECTIVE PEOPLE* 252 (25th anniversary ed. 2013).

26. *See id.*

27. *Cf. id.* at 29 (discussing human influence strategies and stating that “[i]t simply makes no difference how good the rhetoric is or even how good the intentions are; if there is little or no trust, there is no foundation for permanent success”).

28. Peter Economy, *How the Platinum Rule Trumps the Golden Rule Every Time*, INC. (Mar. 17, 2016), <http://www.inc.com/peter-economy/how-the-platinum-rule>

rule exists for servant-leaders. The “platinum rule” instructs to “do unto others as *they* would want done to *them*.”²⁹ Essentially, this rule recognizes that people will be more receptive and responsive when communicated to and treated in ways that matter to them.

For an in-house counsel seeking to establish a collaborative relationship with an operational leader, following the platinum rule usually means finding ways to serve in two main areas: (1) generating revenue, and (2) reducing costs. More and more, companies are also focusing on employee engagement as a third objective.³⁰ But an operational executive’s performance will primarily be judged on these two traditional metrics. If in-house counsel can start by helping operational executives generate revenue and reduce costs, further collaboration will fall into place.

D. Practicing Servant-Leadership: An In-House Counsel’s Experience

The methodology of putting servant-leadership into practice will undoubtedly vary based on personalities, corporate structure, and industry. Hopefully, my own attempt at adding value through servant-leadership as an in-house counsel in the hospitality industry can provide some insight.³¹

As our in-house legal department focused more on adding tangible value to our company by serving our team of executives, I began trying to cultivate strong relationships with members of our senior management. I started small. I scheduled a meeting with one of our Vice Presidents (“VP”) to accomplish only three things: (1) get to know that VP, (2) learn about the operations side of the hospitality industry, and (3) convey to the VP that I wanted to be a resource he could utilize. I chose this particular VP to start with because I knew he subscribed to the servant-leadership philosophy. Servant-leaders can certainly work with others who hold contrasting

-trumps-the-golden-rule-every-time.html.

29. *Id.* (quoting DAVE KERPEN, *THE ART OF PEOPLE: 11 SIMPLE PEOPLE SKILLS THAT WILL GET YOU EVERYTHING YOU WANT* 96 (2016)).

30. *See, e.g.*, David Mizne, *7 More Fascinating Employee Engagement Trends for 2017*, 15FIVE, <https://www.15five.com/blog/2017-employee-engagement-trends/> (last visited Oct. 22, 2017) (citing trends suggesting an increased focus on employee engagement).

31. Personal and professional disclaimer: my views and opinions do not necessarily reflect those of my employer, and I fully admit that I am not an expert servant-leader—I have made mistakes, I have a tremendous amount to learn, and I have a lot more serving to do.

views, but starting on the same philosophical page gets things rolling a little faster.

As in-house counsel, finding ways to help increase revenue or reduce costs is understandably difficult at first.³² Attorneys are not typically trained in business operations. Without this expertise, they will rarely be able to produce practical solutions on their own. However, as the attorney develops a rapport with an operational department and learns more about the business's challenges, opportunities have a way of popping up. In my own example, I neither came up with nor augmented the idea. I merely supported it to the best of my ability.

After developing a good rapport with the VP's team, I learned where *members of the team* felt that *they* needed the most help. The VP's team had been hammered by understaffing during their busiest season. This led to an incredible spike in overtime expenditures and increased turnover due to employee burnout. The VP needed to solve these staffing issues and, impressively, had already come up with a solution. The VP decided to follow the lead of other companies in the hospitality industry and created an international student program.³³

Although this staffing solution was not new to the industry, it was new to the organization and had to be started from scratch. By starting this program, the VP had set what Bachelder would call a "daring destination" for the company.³⁴ I decided that my own "daring destination" would be helping the project come to fruition. This sentiment seems elementary. But getting superior results in this instance did not require the legal department to come up with some profound original plan. It merely required supporting the VP where the VP needed support.

Much of my early work in this endeavor resembled traditional legal work (e.g., advising on equal-opportunity-employment

32. See, e.g., Abbot Martin, *A Roadmap to Sustainable Savings*, CORP. COUNS. (Apr. 3, 2017), www.corpcounsel.com/id=1202782825997/A-Roadmap-to-Sustainable-Savings?mcode=1202617073467&curindex=0&slreturn=20170303151920 (giving examples of cost-management problems and potential solutions).

33. This is a program in which college students from universities around the world travel to the United States for three months in the summer to work and gain a cultural experience. Students work only during seasonal influxes and only in positions that cannot be filled by accessing the local labor market.

34. See BACHELDER, *supra* note 11, at 37 (discussing a component of servant-leadership in which the leader sets an aspirational goal for the team).

concerns, interpreting federal laws and regulations, reviewing contracts with the entity supplying the students, and drafting rental agreements). The first season was small but successful. Overtime in the VP's department declined significantly, employee morale improved, and turnover decreased from the previous summer. By all metrics, the VP successfully brought the company to the daring destination. Tangible costs to the company had decreased, and the supporting role that the in-house legal department played produced value in the eyes of the VP.

Following the initial success of the program, the VP desired to expand the program to more departments and more facilities. Meaningful growth required a new daring destination. We decided that we would grow the program enough to play a primary role in our organization's strategy to address long-term labor shortages in Minnesota. Growth of this magnitude would require substantial internal investment. As such, the support needed from the legal department changed. In addition to traditional in-house counsel work, I now supported the VP in proving the value of the expansion and planning the expansion in a manner that would keep overhead costs down. In this expanded servant role, my work included a legal component, but it was a component that may not be considered typical for in-house counsel.

Many in-house legal departments play an active role in the government affairs of a company. Attorneys are uniquely qualified to interpret proposed laws and regulations as well as predict any unintended consequences. Through active engagement with the Minnesota Chamber of Commerce, my team gained valuable insight about labor projections for the State of Minnesota. Essentially, as the Baby Boomer generation retires, the subsequent generations are not large enough to backfill the loss in labor.³⁵ Starting in 2019, the State of Minnesota will begin to see a decline in its population ages twenty-five to sixty-four.³⁶ This decline is projected to bottom out in 2028 and is not projected to recover to pre-decline levels until about 2033.³⁷

These projections incorporated the most current data regarding migration patterns in Minnesota. The state's positive

35. See generally MINN. STATE DEMOGRAPHIC CTR., OSD-16-152, DEMOGRAPHIC CONSIDERATIONS FOR LONG-RANGE & STRATEGIC PLANNING: FOR THE STATE OF MINNESOTA'S EXECUTIVE AND LEGISLATIVE LEADERS (2016).

36. *Id.* at 8.

37. *Id.* at fig. 5.

yearly international migration currently compensates for the state's negative domestic migration, resulting in a positive total net migration.³⁸ Under the current presidential administration and Congress, relying on such positive international migration numbers seems overly optimistic. Because our organization already struggles to staff the positions that could be filled by the international student program, the information and insights that we obtained through our government-affairs engagement helped prove the program's value as part of a long-term strategic solution.

Keeping down the costs of expanding the project required us to analyze additional housing solutions for the students. Negotiating contract terms is often considered a core duty of in-house counsel. However, these negotiations also require understanding the needs of the business and thoroughly vetting all alternatives. To be successful, the in-house legal department and operations department must work collaboratively on these negotiations. The negotiations for the program described here are still ongoing, but so far I am confident that we will be able to meet the needs of the business at reasonable costs.

In reality, the credit for the success of this program must go to the VP's team. They got this project off the ground and helped it thrive. My role, and the role of the legal department, paled in comparison to the time and effort given by the operations department. However, this project provided the in-house legal department an opportunity to serve in a unique capacity that truly showed its value to the organization. The VP and the heads of other business units have recognized that value and now utilize the in-house legal department as a resource for more value-adding projects. By bringing in-house counsel's unique skills and perspectives into areas in which they have never been utilized, the organization may realize more opportunities to innovate.

IV. PARTING THOUGHTS

Critics of the servant-leadership model and the in-house counsel example described above may reasonably argue that this type of service does not constitute true leadership. However, leadership in the in-house counsel role is a bit different from leadership in other business roles. In-house counsel have the opportunity to help lead

38. See, e.g., MINN. STATE DEMOGRAPHIC CTR., OSD-15-148, MINNESOTA ON THE MOVE: MIGRATION PATTERNS & IMPLICATIONS 6 (2015).

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the whole organization forward by serving individual executives and business units. In-house counsel will never—and should never—be recognized as *the* leaders, but they can lead other leaders through service, which will in turn demonstrate their value to an organization.

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