Afternoon Plenary

General Counsel Roundtable
About the Presenters...

David S. Cade is the Executive Vice President/CEO of the American Health Lawyers Association (AHLA), the nation’s largest nonpartisan educational organization devoted to legal issues in the health care field. The Association’s more than 13,500 members practice in a variety of settings in the health care community. He joined AHLA in March 2015. Mr. Cade’s broad leadership experience in the health law profession includes a 14-year role as Deputy General Counsel at the U.S. Department of Health and Human Services (HHS), where he supported program policy and developed legal positions to expand health insurance and coverage options for Medicare beneficiaries, as well as established creative solutions to support Medicaid program expansions. During his 28 year career at HHS, he also served as the Acting General Counsel and he was the Director of the Centers for Medicare and Medicaid Services’ Family and Children’s Health Programs Group and Acting Deputy Director of the Medicaid Bureau. Mr. Cade also served as a working group member of the Clinton White House Task Force on Health Care Reform. Prior to accepting the top staff position at AHLA in 2015, Mr. Cade was a Shareholder in the Health Care and Public Policy Practices at the national law firm Polsinelli, P.C. in Washington, DC, where he advised large hospitals, health systems, associations, corporations, and community providers. Mr. Cade also served for six years on AHLA’s Board of Directors (2009-2015), where his work included efforts to increase the diversity of the Association’s members and leaders as well as to broaden participation among public sector lawyers, non-lawyer health care practitioners, health care liability experts, and academicians. David Cade is a tireless advocate for diversity and inclusion in his field and for health care delivery systems and has advocated for greater focus around the issue during his time in both the public and private sectors. Throughout his career he has created a collaborative environment where public and private sector parties can come together to discuss the most challenging legal and policy issues impacting the health care system including financing, reimbursement, compliance, quality and patient centered care, fraud and abuse, corporate governance, emergency preparedness, and numerous coverage and eligibility policy issues. Mr. Cade earned his law degree from the University of Maryland School of Law and his B.A. from The College of William and Mary. He is a member of several bar associations including the District of Columbia Bar, Commonwealth of Pennsylvania Bar, The U.S. Supreme Court Bar, the United States Court of Appeals for the District of Columbia Circuit, and several other Circuit courts.

Ralph V. Topinka is Vice President and Senior Associate General Counsel at ProHealth Care, Inc. in Waukesha, WI. He received his undergraduate (journalism) and law degrees from the University of Wisconsin Madison. He also served as a law clerk for Judge Barbara Crabb in the Federal District Court for the Western District of Wisconsin, was engaged in the private practice of law for more than 20 years, and served as Vice President and General Counsel of another integrated health care system. Mr. Topinka is a member of the American Bar Association, the State Bar of Wisconsin (Health Law Section) and the American Health Lawyers Association.

Choua L. Vang is in-house counsel at Bellin Health Systems, Inc., located in Green Bay, Wisconsin. She received her undergraduate degree from the University of Wisconsin-Madison, and her law degree from the University of Wisconsin Law School. Prior to joining Bellin in 2011, she was with Godfrey & Kahn, S.C., in its Madison and Appleton offices, as a member of its health law team. Ms. Vang is a member of the Wisconsin State Bar Health Law Section and a member of the American Health Lawyers Association.

Christine E. Woleske, Bellin Health Care, Green Bay.
General Counsel Roundtable

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Words of Wisdom:

Resolutions We Recommend For Outside Counsel*

By Linda C. Emery
Edited by Ralph Topinka

*Linda Emery wrote these “Words” when she was Vice President and Senior Litigation Counsel at a national company. She currently is a shareholder at von Briesen & Roper, s.c. in Milwaukee, WI. Ralph Topinka edited the “Words” for the General Counsel Roundtable for the 2015 Health, Labor, and Employment Law Institute.
**Words of Wisdom:**

**Resolutions We Recommend for Outside Counsel**

*By Linda C. Emery*

**The Best Relationships Take Hard Work.**

Think of our relationship as just that, a relationship. Call me often and keep in touch. Better yet, call me for no reason at all. (But don’t bill me!) Make sure I know how to find you at all times. Otherwise, that big new lawsuit, project, deal, or contract might go elsewhere.

**Invite Me to My Party.**

Please make sure that you keep me apprised of the calendar. Invite me to my own party—I want the opportunity to attend meetings, depositions, hearings, settlement conferences, etc. I may not be able to go, but everyone wants to feel included. Moreover, chances are if I sit through a deposition or conference, I know more about the company than you do and I can be of great help.

**Introduce Me to Your Team.**

Introduce me to anyone new you want to use to staff a case, project, or deal. It’s always good to know a little bit about who you are dealing with. I think my mother taught me that a polite introduction is part of basic manners.

**Know My Style.**

Ask me our communication style preference—e-mail, phone, letter, in-person. Each of has these preferences. Ask me how much paper I want to receive—am I a packrat or a paper minimizer? Do I live in the electronic age or can I barely turn on a computer? In general, more information is better. Let me know what we can do to make each other’s lives easier.

**Know My Company.**

Look at our Web page from time to time. Review our annual report. Read the newspaper. Make sure you are dealing with the right legal entity when you are drafting contracts or responding to pleadings or filing a lawsuit for us; it’s always a plus for a lawyer to use the correct client name. Ask questions about the company and its products. Your behavior as our outside counsel reflects on our company’s image. Don’t behave in a way that may harm our reputation with judges, opposing counsel or third parties.
The Best Laid Plans.

Please provide me a litigation or project plan earlier rather than later. You can’t succeed without a good plan. I understand that the plan may change from time to time. Update the plan and give me periodic assessments of liability and potential damage exposure.

Don’t Procrastinate.

Please, please, please give me enough time to review drafts of significant documents and pleadings. In litigation, start your fact finding early. Witnesses leave the company, memories fade, and interest wanes over time. Thus, get the facts up front and in writing; that way we could avoid burdening witnesses by having to talk to them multiple times. The same holds true for transactions: get all the facts; ask the right questions to get them. If I call you, return my call the same day if possible, but always within 24 hours.

Feel Free to Track Me Down.

I will be happy to help whenever you have a question or need guidance, but sometimes I can be hard to reach because of the many demands of my job. If you want some undivided attention on a serious matter, it always helps to make an appointment so that we have guaranteed relatively uninterrupted (I hope) time.

Do Your Homework.

Don’t call me and ask me to do your homework. If you need access to documents, executives or witnesses, I will facilitate that, but I need you to spend time at the company, making sure it’s right. If I had time to handle the lawsuit, project, or transaction, I would. Be prepared for a hearing or a meeting with my business clients. They are very busy people. Have an agenda for each meeting, have a purpose for the meeting and get it done in a reasonable amount of time.

Be Honest About Conflicts.

Not taking conflicts of interest seriously or failing to deal with them honestly is the surest way to end our relationship.

We Read Your Bills, Maybe You Should Too.

You would be amazed how may lawyers don’t read their own bills before they send them. It is not unusual to find other client’s matters on our bills. Don’t let this happen to you. As a corollary, there is nothing worse than finding out what you have been doing for the last month by reading your bills. Make sure you are talking to me if you are doing a significant amount of work on a matter in a month. Don’t use your bills as a status report, but understand that your bills tell a story of the work you and your firm do: make sure your bills make sense.
Ask Before You Research.

Don’t have significant amounts of research done without asking permission. We may have had the same issue researched before in another matter, or we may choose not to spend our money that way in a particular case.

Be Good to My Co-Workers and My Team.

Treat my co-workers, especially my administrative assistant and my paralegals with kindness and respect. Be aware that they can help you get close to almost anything you need to help with the case (i.e., documents, access to executives, employees, and witnesses). I listen to what they say and what they think of you.

Be Creative.

Litigation is only one way to solve a dispute. Keep in mind that there are other strategies, priorities and ways to contain costs of litigation.

Play Well in The Sandbox.

I often need to use several firms when handling complex litigation because of different areas of expertise. Almost across the board those firms do a terrible job of working with each other. Folks, there is plenty of work to go around and we don’t have time to arbitrate fighting among firms which are supposed to be working for our common interest.

No Surprises.

I love surprise parties. I love surprise presents. I hate surprises in transactions, contracts, and litigation. In short, get it right and don’t surprise me.
Ten Rules for Proving Your Value*
Frederick J. Krebs
Senior Fellow
Georgetown University Law School
Center for the Study of the Legal Profession

“Being valuable is like being a lady. If you have to tell people you are, you aren’t.”
Margaret Thatcher

In-house counsel must be focused on providing value in today’s corporate legal environment. Failure to do so is likely to have adverse consequences for your career. So, I offer some “rules” to help you prove your value in the corporate setting.

During my career I have had the privilege of working with in-house counsel around the world. I am always struck by the commonality of issues and challenges faced by the in-house legal community. Proving value is one of the most basic and widespread.

Over the years I developed these “rules” from “takeaways” at numerous conferences and meetings, discussions with corporate counsel, and many conversations with leaders of the Association of Corporate Counsel (ACC). Being part of a global organization like ACC provided an incredible professional benefit – ready access to both thought leaders and the “wisdom of the crowd”. This article seeks to distill some of that wisdom.

Understanding value

1. First and foremost, you must always remember that the client defines value not the lawyer
You must align expectations with the client or educate the client to modify the expectations, otherwise your efforts to prove value likely will fall short.

The 3 Geeks and a Law Blog once noted that there is not one size fits all; the definition of value varies from organization to organization¹:

“… accept ‘what is’… work within the current value perception of [y]our organization and stop fighting to demonstrate [y]our value in areas that are not valued…. [F]ollow the money and you will be able to tell what the organization values. It may not be what we value or even where we think we can contribute at the highest level, but if X is what the organization values, then X is where we must be. This means that there is no identical road map for everyone. We must each create our own value within each individual organization based on that organization, and not some preconceived notion…”.

To be successful, you must have a common, honest, and realistic understanding of the value drivers in your organization. While you should be observant and learn from what you see, it also would be wise to consult with your business colleagues and key stakeholders as your perception may be slanted. These colleagues may vary depending on your position in the corporate

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hierarchy but they could include the CEO, Board, CFO, business partner, or line manager. You then need to match your department activities with the value drivers of the organization.

Jeff Carr (General Counsel, FMC Technologies) a frequent speaker on this topic offers an interesting and succinct summary of this rule: “What my boss finds interesting, I find fascinating!”

2. Saving money is important, but value is more than just cost savings!

Invariably, any conversation about value focuses on (or at least includes) spending and saving money. Sometimes you must spend in order to improve outcomes, achieve strategic goals, or provide long-term value. We have all heard the lament about the outrageously high hourly rates charged by outside counsel. Yet, we all recognize that there are situations (e.g. bet the company litigation, strategic acquisition, or merger) where a few hours with the right lawyer at one thousand dollars per hour (or more) provides exceptional value. Other examples might include money spent for new technology such as a knowledge management or e-billing systems, as well as for management training. We all have heard the horror stories about ineffective spending; like everything else, the key is to spend wisely.

3. Your legal contribution is only part of your value proposition

Many leading in-house counsel play significant roles on the management team and provide strategic advice and guidance beyond answers to legal questions. A recent ACC report, “Skills for the 21st Century General Counsel”2 (“ACC Skills Report”) concludes that a successful general counsel must be more than just a lawyer.

“Today, and in the future, a general counsel must offer much more than legal acumen. Our research shows that being a successful law department leader requires a more expansive notion of the concept of lawyering. This extended view encompasses not just legal advice, but also counseling and strategic input.

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[T]he GC skill set needs to be multidisciplinary and much broader than simply understanding the law. For example, general counsel are above all — like the title implies — generalists, much like other senior executives. As generalists, they touch all areas of the law: employment, contracts, M&A, litigation, etc. But, successful general counsel also need to take a broad view of the external environment, analyze trends, and use that understanding to help the executive team ‘see around the corners,’ contribute to strategy, and be proactive about addressing potential legal and regulatory issues. If they wish to achieve their full potential, general counsel must contribute to the business more broadly than strictly responding to specific legal needs.”

4. As you move through your in-house career you develop a progression of skills

First level: efficient, dependable, and no surprises. Second level: manage budget, manage people, and understanding and accepting accountability. Third level: judgment, strategic perspective, and vision. All levels require the ability and willingness to communicate.

The ability to communicate includes the ability to listen and to understand what your colleagues actually need. Participants in the ACC Skills Report describe it this way:

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“The first is an ability to listen well and calibrate responses to the nuances of the situation. Some interviewees referred to this trait as ‘emotional intelligence.’

Most lawyers are trained to talk most of the time – we are paid in order to offer our opinion. But the best in-house lawyers aren’t offering opinions most of the time; they are just listening. They are listening compassionately, they are listening emphatically, and they have a high degree of emotional intelligence, which allows them to appreciate the body language and emotion of the other person.

Others described this trait as being comfortable in your skin, and being able to engage with people and influence others to see your point of view. However defined, this trait is very useful to those seeking to become trusted counselors.

Second, effective GCs, both now and in the future, must communicate well, or, as one interviewee described it: ‘[T]alk about complex things simply and put them in context.’ Communicating effectively also includes the ability to craft and deliver messages appropriate to the audience. According to one GC, messages must be tailored and not delivered with a ‘cookie cutter.’”

5. The value proposition for in-house counsel varies

This depends upon: (A) where you are in the corporate hierarchy (GC, staff attorney, or somewhere in between); and (B) your audience (e.g. board, CEO, CFO, CLO, supervisor, business client). You may be dealing with several audiences at any given time. Certainly, if you are a staff attorney with no supervisory or management responsibilities the expectations will differ from those of the general counsel.

One general counsel explained it this way: “I often say that every attorney in the team has the same three jobs: (1) strategic advisor to their customer; (2) provider of legal services to help their customer achieve business objectives and maintain the ethical compass; and (3) build and manage high performance team to achieve (1) and (2). It's just a question as to for whom: Board and Executive, senior management or business function management.”

6. To provide value you must understand the business

To understand the business you must understand how the company makes its money. Remember what Yogi Berra once said: “You can observe a lot just by watching.” In-house counsel frequently assert that they understand the client and its needs better than outside counsel. I believe that to be true but it will not just happen – you must work at it. And while you work at this keep rule number 1 in mind.

Using metrics to prove value

7. In a corporation what is important gets measured

What gets measured gets done. As discussed above, you must understand the end game (or goal) in order to select meaningful metrics.

Perhaps the most commonly used metric is legal expenditures or budget management. The ACC Skills report notes that a general counsel “who consistently fails to accurately predict legal costs will certainly lose credibility (if not more) within the organization”. It goes on to conclude that
effective budget management has become “table stakes” and a taken for granted job characteristic. One general counsel recently told me “meeting the budget targets, and being able to deliver short-term savings when they are requested (typically of all the businesses, not just me), is something that is an absolute requirement.”

8. Your legal department goals and metrics should align with and support the corporate goals
One GC described his approach like this:

“What I do find my management is most interested in (especially the CEO) is the legal strategy as such. First, does the legal strategy reflect the company's overall strategy (i.e. is it a real business strategy, does it support the company's overall goals). And does the legal strategy drive basic resource allocation decisions – where and how to invest, hire people, spend our time, etc… I find real benefits from talking about the business case behind our initiatives/strategy, because then my business counterparts know I think about helping the company in the same way they do.”

Another had a similar perspective:

“I’ve found that the metrics which really interest the C-Suite are those that tie into the business. For example, a company that spends money on trademarks or patents would want to show that doing so adds value to the business. In CFO speak – that the investment (cost to obtain, maintain and defend the IP) yields a positive net present value (using a metric such as increase in value of the brand or revenue stream from licensing the technology.”

Other metrics might include legal spend as a percentage of revenue, number of lawyers per billion dollars of revenue, and external spending as a percentage of revenue as well as number of patents filed, average filing timeline, and total patent application costs. One GC of a global telecom company described his approach as follows:

“I usually have each of my director reports – litigation, IP, transactional, corporate, etc. – develop the metrics that they specifically think represent organizational efficiency within their teams. For example, in the teams supporting business units or sales, it will be measuring the number of transactions and how long they take to close. With litigation it may be the number of active cases v. pre-litigation disputes broken down by type, exposure and length of the case. IP very similar – number of patents, trademarks and copyrights filed and granted. Obviously there are additional levels of granularity.”

9. Metrics should measure outcomes not activities
As John Wooden⁴ once said: “Don’t confuse activity with accomplishment”. Just because you are busy does not mean you are providing value. The metric that your department conducted five
harassment training sessions and implemented an online compliance initiative is a start. The fact that harassment claims against the company declined by 75 per cent in the year following these training sessions shows the outcome and proves value.

As one general counsel in the health care industry explained:

“For our contract units, the key metrics are ‘volumes of contract by type’ and ‘total completion time by type of contract’ (we measure from the date the contract comes in the door to the date it is fully executed by both parties and we track that over the years… it is just amazing how much time is taken out of the process when all aspects (legal and non-legal) are measured in the completion time… it leads to process improvements such as e-sign, eliminating steps/people in the process, templates, negotiating master agreements with third parties that we have a high volume of contracts, and identification of clauses and business positions that slow down the process but add no value, e.g. unreasonable indemnification, choice of law, etc.”

10. Use metrics to drive continuous improvement

Do more than just collect data. To this end you should collect data that is actionable. Then look for ways to reduce or improve it. You should understand why you collect data and then use the data or stop collecting it.

One consultant cited the use of e-billing systems as a simple example:

“Some departments use e-billing systems to unlock the wealth of data that is in legal bills enabling them to become better managers of their work. For example, they may analyze e-billing data to show exactly who is doing the work, how long it takes, and what it costs – by individual and by function (partner/assoc./paralegal/staff), allowing in-house counsel to quickly check to see if firms are handling work at appropriate levels. The system can also check to make sure that retention guidelines are not being ignored, e.g. alerting in-house counsel when new people are cycling on and off projects without approval, or when new rate changes come through – most of which are missed with paper bills.”

Some departments use “after action” reports following major activities or litigation. Jeff Carr contends the “single most important step” you can take towards innovation and improvement is an “after action, lessons learned” process. After you complete a major project, review, analyze, and then implement necessary changes. As you do the review, keep the following in mind:

- It’s about business — not winning;
- It’s about prevention — not firefighting;
- It’s about simplicity — not complexity; and
- It’s about the business — not interesting questions.

Conclusion

Much has been written about the unprecedented changes occurring in the legal profession and the “new normal”. We see new legal service delivery models, new products and services, as well as innovative technologies. Many organizations face strong competitive and economic threats to their existence. It is in this environment that the successful general counsel will need to exercise leadership, identify how the law department will provide value to the organization, and put forth meaningful metrics that clearly show that the department has achieved its goals.
The importance of communication, listening and understanding the business previously noted remain essential; as one general counsel with a European Multinational Company advised me:

“Over the years I’ve also tried various specific customer feedback mechanisms – asking key customers about the legal team’s services overall and about individual lawyers specifically. From that, I know the business wants very much to know the lawyers understand the business context, understand the challenges the business is facing, and can deliver advice in that context. No ivory tower solutions please.”

The ACC Value Challenge materials provide a wealth of resources and training opportunities that may help you achieve these goals. I encourage you to check them out at www.acc.com/valuechallenge/index.cfm.

About the author
Fred Krebs provides advice and counsel to the legal and non-profit communities. Currently, he serves as a Senior Fellow at the Georgetown University Law School Center for the Study of the Legal Profession where he focuses on emerging issues and trends relating to corporate counsel and the in-house practice of law. You can follow him on Twitter @FrederickJKrebs. Additionally, he co-teaches a class on introduction to the in-house practice at Georgetown.

He had a distinguished career as President of the Association of Corporate Counsel (1991–2011) and remains a Senior Advisor to the association. During his tenure ACC grew from 7,900 to more than 27,000 members and became the leading global association for in-house counsel. In 2011, Fred received a Lifetime Achievement Award for contributions to corporate governance from Corporate Secretary magazine and the Ally for Justice Award from the National LGBT Bar Association. He is an avid photographer and his work can be found at http://fredkrebs.zenfolio.com. Fred can be contacted at krebs@fredkrebs.com.

References
3. A famous American baseball player known for his mangled quotes, e.g. “It ain’t over ‘till it’s over”.
4. A famous American basketball coach known for simple messages directed at how to be a success in life as well as basketball.

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➢ Who we are
➢ What we do
➢ Plan for this session