

**EMBRACING THE CAMEL CONUNDRUM: HOW GENERAL COUNSEL ADAPT PROFESSIONAL  
INDEPENDENCE TO THE CORPORATE ECOSYSTEM**

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Thank you for that very kind introduction, Paul, and good afternoon everyone. I'm honored to have been invited to join you today. You may have noticed a glaring omission in Paul's introduction, and that is that he didn't mention my experience as a general counsel. He didn't miss that page of my resume—no, I've never worked as a general counsel or even worked in-house. And that's true of Chief Justice Veasey too. So you may wonder what qualified two people who have never worked in-house to write a book about general counsel. And that's a very good question.

I like to think of us as naturalists, going out to see what we could learn about general counsel in their natural habitat. So today, I'd like to talk about independence as an adaptive trait that is critical to the survival of the general counsel as a species. (And much of what I say about general counsel can be said about in-house lawyers more generally.)

Someone once quipped that a camel is a horse designed by a committee. That's meant to be unflattering to the camel. Some might make a similar allegation about general counsel. The ungainly camel is the evolutionary result of the many environmental pressures the species faces. Like the ungainly camel, some see the modern general counsel as the awkward product of the influence of too many constituencies.

People who would take this view might say that demands for short-term returns and “making the numbers” must tempt the general counsel to look the other way when business people seek a legal rubber stamp of approval on a questionable deal—the camel’s long snout sure looks like it would block its view, and that’s before the animal is even out in the desert in a sandstorm.

Others see the general counsel as a naysayer, a bottleneck to getting deals done—and camels sure do have a reputation for having a nasty personality.

Others might say that it’s impossible for the general counsel to navigate the multiplicity of roles they are asked to fulfill in the modern corporation—roles which include business and legal advisor, manager of the legal department, promoter of an ethical culture, risk manager, problem solver—and it does look awfully difficult for a camel to get around with all those long, spindly legs.

Finally, there’s the most fundamental challenge—that iconic hump, so to speak. And that is whether, given all these pressures, it’s impossible for the general counsel to fulfill the ultimate ideal of the independent legal professional. This might be summed up as the challenge of balancing independence on the one hand with compromise and the need to get along with the other corporate constituents on the other. This independence challenge ties in with the tensions that the general counsel faces in serving both the CEO and the board, both the varying interests of shareholders and the collective interest of the corporation, and both the advocacy role as lawyer for the corporate client and the gatekeeper role as a guardian of the public interest.

General counsel are buffeted by these various demands—and that presents a serious challenge, and they do have to find ways to deal with them. The variety of demands—along with changes in the “environment” in which the corporation and the general counsel operate—are reasons that the general counsel role has evolved so rapidly and significantly in the past twenty years or so. Chief Justice Veasey and I interviewed quite a few general counsel while writing our book, and some of them are here today. They gave us so much great information and great quotes, which we used liberally in the book. The wisdom of the people who have been in the trenches might be the key value of the book. One of my favorites, which we used as the theme of one of the chapters, was a quote by Kim Rucker, who was then the general counsel of Avon and is now at Kraft. She compared being a general counsel to being a gymnast.

In fact, the general counsel role seems to be prone to metaphors. General counsel have been called “innkeepers,” “statesmen,” “gatekeepers,” corporate “lubricants.” Some metaphors were added in this morning’s sessions, too: Bob Weber called general counsel “baseball managers” and a “frog in a pot of hot water,” and Lou Briskman added “traffic cop.” But I’m going with the camel. I’m going with the camel because I like the optimistic, adaptive view of in-house lawyers, especially with respect to their exercise of independence. The great majority of modern general counsel do adapt, and they find ways to harmonize the many tensions and challenges they face. So, my camel metaphor offers an alternative picture of the general counsel. It replaces a view of the general counsel as ungainly and awkward, misshapen by too many environmental pressures—with a picture of the modern general counsel as a highly adapted and adaptable creature that has evolved to be a key participant in the corporate ecosystem.

The general counsel's ability to hone that independence trait is one of the key tools to achieving that adaptation. So how does a general counsel hone and adaptively exercise the trait of professional independence?

One key step is making sure she has the right tools in place to be able to exercise independence. Camels have a special trait that allows them to function in the desert in a sandstorm, and that's a third eyelid. This third eyelid is clear and camels can close it and see through it—they can get the information they need to keep walking even if the sand is blowing.

For general counsel, this third eyelid represents the critical role of information in exercising their independence. Working within rather than outside the company, general counsel are in a great position to get the information they need—they hear the murmurs and “water cooler” talk; they are well versed in the culture, politics, and relationships (this is the “translation” value that Bob Weber talked about earlier); and they have the authority to impact and shape the channels of information flow. This ability to make sure she gets the right information empowers the general counsel to exercise her independence in several ways. For example, hearing the rumors and water cooler talk enables her to assess when something is going on within the company that could be problematic but hasn't blown up into a crisis yet, look into it further, and take corrective or preventive measures if necessary. That is, it empowers and perhaps even obligates her to be more proactive than an outsider might be able to be.

As another example, being able to impact the channels of information flow allows the general counsel to play an important role in shaping the information flow to the board—a critical part of helping the board fulfill its oversight function properly. Being able to shape channels of information flow also helps the general counsel impact the information that flows to the legal department—to make sure that all the relevant information is being given to appropriately define

and answer legal questions. Enron observers have suggested that executives' overly narrow definition of the assignments given to lawyers and the lawyers' lack of information about the bigger picture may have contributed to the downfall of the company. The general counsel who is creative and proactive in using that clear third eyelid can play a strong, independent role in looking out for and addressing unidentified problems and in making sure that issues that are presented for legal review are properly, and not overly narrowly, defined.

Alright, so back to the camel—what about that funny-looking hump? Some people think that camels store water in their humps and that's why they can live in the desert, but they don't. The reason they drink so little water and can live in the desert is because they're very good at *conserving* water. They have ways of cooling themselves other than sweating, and they can allow their body temperature to rise 6 degrees without sweating and without harm to their tissues. Like the camel, the independent general counsel is a really good conserver as well—instead of cleaning up spilled milk, she works hard to keep the milk in the glass.

The general counsel's role as conserver-in-chief reflects her position and ability to prevent problems. One way the general counsel fulfills this role is by saying that a proposed course of conduct is "legal, but foolish." Her ability to say that and be heard relies on her blended role as both business and legal advisor—in other words, having that additional role as a respected member of the business team allows her to not stop just at "it's legal," but to continue with "but it's also foolish." Her many roles in the company beyond the strictly legal roles—such as roles in managing risk (including risk to reputation), and working with public policy and government relations—give her the tools to make judgments about what moves are "legal but foolish" and to convince others about the potential negative fallout.

Another trait of the camel is that nasty temperament—camels are known to have a pretty tenuous relationship with their human partners, so what ties them together? Well, in the desert where they live, most of the water is underground, so camels need humans to dig wells and draw it up—they basically work for water. In fact, when the rare rainstorm comes up, camels have been known to bolt—with all that water around, they don't need the people anymore.

Like camels, general counsel are sometimes painted as having a tenuous relationship with other executives and directors. It goes back to the naysayer image I mentioned before, and the general counsel's tension between being independent and wanting to keep her job.

Alan Braverman, the general counsel of Disney, told us something that goes to this point about the potentially tenuous relationship between the general counsel and the other corporate constituents. He said that “The trick and one of the real challenges of being a general counsel is maintaining independence without eroding trust.” So how does a general counsel do that?

The first step is building relationships with the other senior executives that give the general counsel an opportunity to show her good judgment. President Friedman this morning articulated how a general counsel's presence in-house allows her to develop these relationships that get her a seat at the table and the ability to be heard. Building trust also requires that the general counsel develop and demonstrate a thorough understanding of the overall strategy and objectives of the company.

The strong, independent general counsel also knows when to speak up and when to listen, and doesn't feel it's necessary to say something about everything. Some of our interviewees described this as picking your battles, and suggested that taking this approach means that when she does speak up, people will recognize that it must be important. A similar characteristic of the independent general counsel is knowing when to put on the brakes—don't necessarily say no,

but say “let’s sleep on it.” Lou Briskman is one of the people who emphasized this point in our interview with him, and it goes to his traffic cop reference this morning. Taking a little extra time often goes far in keeping the company on course.

Finally, a general counsel also maintains independence without eroding trust when she is secure enough in her role to suggest when the board might want a second, outside opinion. I fully agree with Bob Weber’s statement this morning that usually outside counsel is not needed—what is needed is courageous legal leadership. Typically, if the general counsel is acting appropriately independently, the board or the independent directors do not need separate counsel as a general matter. But the general counsel should be prepared to recommend it when appropriate, and should not feel that doing so threatens her position.

When all these tools are used to develop a strong relationship of trust, then the CEO and others will listen if it does become necessary for the general counsel to exercise her independence by counseling against a course of action. When that trust relationship is nurtured, the general counsel and other corporate leaders will be able to work together to make sure the caravan crosses the desert safely.

So, general counsel have developed a number of traits that enable them to adapt their obligation of professional independence to the corporate environment. Some of the ones we’ve talked about today include the fact that the general counsel has good access to information and the ability to shape information channels, she is in a strong position to prevent problems, and she can build strong relationships that promote trust and therefore her effectiveness in keeping the company on the right track.

But given all the pressures of their environment how do general counsel resist the urge to bolt when it rains? There is a lot of discussion about the liability and reputational risks that

general counsel face and that keep them up at night. One of the chapters of our book deals with that issue, and we have recently updated and expanded that chapter into an article that will be published in this month's issue of *The Business Lawyer*. So if you suffer from insomnia, or know a general counsel who does, you can watch for that article and see if it includes anything that will help you fight the urge to run.

After all, general counsel are typically highly skilled, talented people who could choose a less risky (and perhaps a more lucrative) professional role—they could be a fish swimming the reef off the coast of Maui instead of a camel living in the arid Sahara. But corporations and the public interest rely on them to stay in-house, to remain in their roles as legal advisors, business partners, and among the ethical leaders within the corporation. So I hope everyone will think of the camel when pondering whether the general counsel can be independent and recognize that professional independence can be—and frequently is—well adapted to the corporate environment, and that allowing for those adaptations to professional independence can be beneficial and not detrimental to both the corporation and the public.

Again, I appreciate the opportunity to be here today, and I hope everyone enjoys the rest of the convocation.