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Setting The Table For Good Decision-Making: And Making Sure The Chief Legal Officer Has A Seat At It

By: Jonathan Aronie, Sheppard Mullin* on July 19, 2023

Welcome to the 10th edition of *OIG Shorts*. In this post we discuss why it's important that Chief Legal Officers (and Chief Ethics & Compliance Officers) have meaningful, real-time involvement in the key legal, organizational, reputational, and business discussions/decisions of their companies, as well as direct access to the CEO and the Board. This idea has come to be known as "having a seat at the table." While significant progress has been made over the years in this regard, still not every CLO is asked to pull up that chair. Many continue to be relegated to the proverbial Thanksgiving kids table.

In 2020, the Association of Corporate Counsel launched an initiative to promote precisely this idea. Since then, [the ACC has been working hard](#) to "inform members of the Board Of Directors (BOD), institutional investors, and top executives of the importance of CLOs having a seat at the table and direct access to the BOD — as well as the importance of developing a company culture where the legal department is regularly consulted in business decision-making." This may be an uphill climb at some companies, but better decision-making and risk reduction make it worth the hike.

Here are some of the reasons we think having that seat is crucial.

- ***Promotes Diversity of Thought.*** The CLO's involvement contributes to the diversity of analysis and decision making, just as the CFO's and SVP of Sales' do. Lawyers think about things differently from others. They also bring to the table valuable lessons learned from unique experiences regarding risk, reward, and — sometimes — catastrophe.
- ***Provides A Broad, Corporate-Wide Perspective.*** Most C-Suite inhabitants are vigilantly focused on *their* area of responsible (and accountability). The CFO watches the dollars coming in and going out. The CIO and CTO watch the tech. The CHRO watches the people. Etc. CLOs, however, watch everything. They provide advice, counseling, and litigation support to every company function. This breadth of responsibility gives the CLO insight into corporate culture, corporate decision-making, and the impact of decisions across the enterprise.
- ***Prevents Disasters.*** In most cases, the CLO advises his/her clients about risk, recommends approaches to reduce risk, and then lets the client chart the path forward. In some cases, however, the CLO must step in and just say no. CLOs are uniquely qualified to recognize when a decision has crossed the line from a reasonable business risk to fraudulent, unethical, or illegal conduct.

- **Promotes A More Effective Defense.** Whether in-house counsel or outside counsel, it is much easier to defend a client when one has some early notice of the behaviors/actions that are putting the client at risk. Meaningful involvement in decision-making allows the CLO not only to assess risk, but to recommend proactive protections that will help reduce risk.
- **Promotes Corporate Culture.** As my OIG colleagues Joe Jay and Scott Maberry [have observed](#), “The truth is that none of us is immune from the pressure to succeed. It takes a *strong moral compass* to resist the temptation to seek success at any price, or to take shortcuts that may violate the law.” Notwithstanding that some would balk at the idea of equating lawyers with a moral compass, those of us in the legal trenches understand the criticality of aligning corporate decision-making with the corporation’s stated values. We also understand the critical role CLOs have played for decades in doing exactly that. Companies that have lost sight of the connection between decision-making and values — or lost touch with their CLOs — have not fared well.

Fortunately, it appears corporate America is getting on board with the “seat the table” idea. According to a 2023 ACC survey, 82% of U.S. CLOs now have a “consistent Boardroom presence,” up from 69% in 2019. Similarly, the survey found that 81% of CLOs report directly to the CEO, up from 70% in 2018. This is a good sign.

In describing why it’s so important that CLOs have a seat at the decision-making table, ACC President Veta Richardson put it this way: “The general counsel is evolving from a purely legal expert to the guardian of the conscience of the company, working proactively and applying a much broader vision and multidisciplinary approach.” We think this is correct and that the moniker “*conscience of the company*” well suits the role of the modern CLO. Having a seat at the table not only is necessary, it is well deserved.

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