

Work Matters

BY MICHAEL P. MASLANKA

CORE CONCEPTS GUIDE BUSINESSES LONG AFTER GCs DEPART

A strong legal culture is a legacy all GCs can leave in the businesses they serve. Once a GC inculcates the right DNA in her company, the business and its employees can go on automatic pilot, knowing intuitively what to do. Here are five core principles a GC needs to instill in an organization to create a culture that will continue to generate smart decisions long after the GC leaves.

No. 1: The law empowers. Too often, employers see employment law solely as prohibiting, not empowering. This view is false. Think empowerment: Understand that the Fair Labor Standards Act allows employers to require exempt employees to work more than 40 hours per week to make up work time missed because of personal absences of less than a day; embrace opinion letters from the U.S. Department of Labor that permit employers to require frequent medical certifications from employees on intermittent FMLA leave; revise an employment policy against harassment to impose upon employees the obligation to do what they can to avoid the harm of a hostile work environment.

The point isn't so much these particulars. It's the lesson that for every employer obligation there is a corresponding employer right. Use the law for leverage and control.

No. 2: With the right guidance, execs and managers can love the human resources department. Sooner or later, GCs are put in charge of human resources, required to work with the department or

asked to reform it. HR is more like a high school hall monitor — doling out information on pay and benefits or advising three write-ups and then employee termination — than a corporate resource for increasing profits and improving market share.

In September's issue of the *Harvard Business Review* (HBR), consultant Gary Kaufman lambastes human resources in "How to Fix HR" and advocates change through a fresh set of metrics: "[Do] not accept measures of activity — things like positions filled, training hours delivered, and appraisals completed on time. Require measures of accomplishment that reflect business success: sales or revenue, profits, productivity, customer retention and so on."

What is measured is what is valued. Measure the right things in the human resources department, and HR workers will become a real asset, generating real dollars. Get HR to understand links between employee compensation and performance; use appraisals for true employee development instead of managerial C.Y.A.; and develop effective interview techniques to recruit the best talent, not people whose main virtue is the same prep school tie or class ring as the interviewer. Look to see what HR workers are reading: the *HBR*, with articles on finance and corporate governance, or an HR magazine with more ads than content.

No. 3: Knowledge requires action. Companies have written rules. They have their place; they are the head, the arms and the legs of the company. But they are not the

soul — unwritten rules are. What are the unwritten rules guiding your company?

The vice president of HR at a national company told me her company's unwritten prime directive is: Knowledge requires action. That maxim animates the written rules, breathing life into them and giving them moral force. In practice, that rule means that if allegations of questionable conduct surface, if suspicion arises that employees are ethically challenged, or if unfair actions come to light, then management must determine the truth and make a proportionate response.

This is easy to write and hard to do yet crucial to implement. As I tap out these words, a draft brief sits on my table. An employee complained of unethical sales practices and was fired shortly thereafter for refusing a legitimate employer request. He cried retaliation. It would have been easy to ignore the allegations, chalking them up to a dissatisfied employee. But, the employer did not; it applied the knowledge-requires-action mantra regardless of where it led. Doing so made for a better company, in which management changed some practices, and a more defensible case: If the company's intent was to fire for the complaint, then why would it so thoroughly look into her expressed concerns?

PULL A LOMBARDI

No. 4: Questions create answers. Later this month, former Enron Corp. CEO Jeffrey Skilling will learn how long he will spend in a federal prison. How did Skill-

ing get in this predicament? It is not by violating some arcane regulation. It is by forgetting fundamentals: Businesses do not increase profits by removing debt from the balance sheet then covering it up.

It's like the story told about the great football coach, Vince Lombardi. The Green Bay Packers once suffered a brutal defeat, full of intercepted passes, bungled tactics and field-goal attempts that went wide of the goal posts. His team members waited in the locker room, readying themselves for an onslaught. Finally, Lombardi appeared, holding a football. He held it aloft and quietly said, "Gentlemen, this is a football." He walked out.

How does a GC pull her own Lombardi? Educate managers that the best way to police ethics is to create a questioning culture.

Questions focus decisions on fundamentals: If management had 10 times as much time to make this decision, would it be the same one? What are the three best reasons for not taking this course of action? Is the company considering whether the action contemplated is proportionate to the issue at hand? Never forget the power of a question. It focuses thinking and funnels choices.

No. 5: Facts don't change, but the story can. Facts do not persuade; stories per-

suaude. Employees don't need more facts to find their wisdom; they need better stories. When a GC develops a storytelling mind-set — when she understands the limited utility of facts and the greater utility of stories to persuade others — she can guide employees to make better decisions.

An associate GC taught me years ago that decisions based on a story are better than decisions based on facts. The company I represented wanted to settle a dangerous age discrimination case. The plant manager wanted a simple "yes" or "no" recommendation regarding whether the business should settle or fight. The associate GC wanted a more thorough discussion decision and buy-in. On a call, she told him this was a \$500,000 decision, just like when the two of them spent days negotiating over the terms of buying a new piece of machinery. Instead of just giving the manager facts — this is the law, this is the chance of winning, here are the numbers — she instead told him a story that made her point.

A story — even a one-liner — is ultimately more persuasive than facts. Consider the decision on whether to settle a potentially expensive piece of litigation. What's more persuasive — spreadsheets on hours projected, expenses

contemplated and possible damages inflicted, or a quick Voltaire quote? "I was never ruined but twice: once when I lost a lawsuit, and once when I won one." Try Annette Simmons' book, "The Story Factor: Inspiration, Influence and Persuasion Through the Art of Storytelling," for greater insight.

Those unsure whether they're building a strong corporate culture should take the time to ask some key questions: If you stopped being the general counsel tomorrow, what have you left behind? Is your DNA in the organization? How can I leave behind a vibrant, intellectually honest organization?

I don't know all the answers. I do know that investment in reflection now leads to sizeable returns later for a GC's company and beyond a GC's departure. **■ ■ ■**

Michael P. Maslanka is the managing partner of Ford & Harrison in Dallas. His e-mail address is mmaslanka@fordharrison.com. Maslanka is board certified in labor and employment law by the Texas Board of Legal Specialization. He writes the Texas Employment Law Letter.