

The Lawyer-CEO: Role Model for a Strategic Business Partner

BY JUNE EICHBAUM AND VICTORIA REESE

The lawyer-turned-CEO is a perfect framework for examining the best practices for lawyers who aspire to become business partners and contribute strategic value to their respective enterprises. We interviewed several lawyers-turned-CEOs and have identified three personal qualities not typically associated with lawyers that are shared by these CEOs: risk tolerance, optimism and leadership. Empowered by these qualities, and guided, in part, by rigorous legal training, these executives act decisively to unlock shareholder value—oftentimes against the odds.

Risk Tolerance

Most lawyers are skilled at risk analysis and avoidance. The very choice to become a lawyer in the first place may suggest they have a risk allergy—distinct from the risk addiction that occasionally leads to the Forbes 400. CEOs know that if they have zero tolerance for risk, they are at odds with their directive to maximize shareholder value. They incorporate a risk calculus into their strategic planning, consistent with their companies' risk appetites and legal constraints.

Gregg L. Engles, chairman and CEO of Dallas-based Dean Foods Co., tried to launch a business dealing in fractional shares of corporate airplanes while clerking in 1983. He wasn't able to raise the necessary funds, but he did meet entrepreneurs who impressed him as being fully



BRUNO BUDROVIC/IMAGES.COM

How does a successful chief legal officer become a successful CEO? What traits and experiences trigger this evolution? *Chief Legal Officer* decided to find out. The first of this two-part series analyzes the personal traits shared by lawyer-CEOs.

engaged in their work. In contrast, many of the young lawyers he knew seemed unenthusiastic about their jobs, even though they were buying new cars and homes. Engles decided that his biggest personal risk was getting hooked on a lifestyle that would handcuff him to a job. He declined offers from prominent law firms.

Following his clerkship,

Engles' first business venture went so badly he had to fight off personal bankruptcy. Still undeterred, he saw opportunity in leveraged buy-out acquisition finance. In 1988 he cobbled together funds to buy Reddy Ice from The Southland Corp. From Reddy Ice, he built Suiza Foods Corp. and merged last year with Dean Foods to form a business with \$10 billion in annual sales.

“Many lawyers let knowledge of risk paralyze them,” Engles says. “They focus exclusively on risk, while entrepreneurs focus primarily on opportunity. The person who can simultaneously perceive the opportunity and the risk has a competitive advantage.”

Peter A. Thiel, CEO and co-founder of PayPal, Inc. in Palo Alto, Calif., developed what he calls “a Western Union on the Internet,” which enables consumers to pay each other online using their credit cards.

PayPal's success amidst a sea of challenges—competition from incumbents, including Citigroup Inc. and First Data Corp.; regulatory regimes that did not easily accommodate the innovation of PayPal's product; fraudsters that sought to profit at PayPal's expense; and capital markets that largely shunned Internet businesses just when PayPal sought capital markets' access—reflects Thiel's determination to navigate these significant risks on PayPal's behalf. Thiel was able to reduce risk when it was strategically advantageous. In 2001 his merger of then-nascent PayPal with X.com created the unchallenged first mover—and managed risk for the enterprise the best way he could at that time.

The threat of global terrorism after September 11 tested the risk tolerance of many CEOs. Henry Hubschman, CEO of GE Capital Aviation Services, says the post-September 11 market for acquisition financing of commercial aircraft was a tough one.

“Everyone was shutting down” he says. “There was no liquidity.”

He observed that after September 11 the deals themselves actually offered more favorable terms to those willing to invest. With GE’s support, Hubschman made new investments. His higher risk tolerance should produce higher profits in the long-term.

Optimism

The optimist is self-assured but not self-focused. The optimist experiences unforeseen challenges as opportunities, not setbacks or frustrations. Optimism enables the lawyer-turned-CEO to sustain a high level of risk tolerance.

Randall K.C. Kau, co-founder, former chairman and CEO of New York-based Zurich Capital Markets Inc., credits optimism with enabling him to see and act upon opportunities. Kau’s optimism empowered him to navigate a nonlinear career trajectory.

He left the security of Sullivan & Cromwell twice. As an associ-

The optimist experiences unforeseen challenges as opportunities, not setbacks or frustrations. Optimism enables the lawyer-turned-CEO to sustain a high level of risk tolerance.

ate he left to join the Treasury Department during the Carter Administration. As a partner, he left to join AIG Financial Products, where he created highly structured, tax-driven currency derivatives. He founded Zurich Capital Markets in 1997, creating highly structured financial products in alternative asset management. Kau’s unique grasp of opportunities embedded in market dislocation, combined with disciplined execution, resulted in remarkable profitability in 2001, a year that many of his competitors would prefer to forget.

Optimism and the notable absence of a personal agenda forged the path to the executive suite for Edward J. Kelly III, president and CEO of Mercantile Bankshares Corp. in Baltimore. Kelly believes that “opportunities emerge when you do something you like as well as you can.” He confesses he is “never happier than when completely immersed in a project.”

Whether as the partner at

Davis Polk & Wardwell who inherited the J.P. Morgan Chase & Co. client relationship, as general counsel of J.P. Morgan, or now as CEO of his former J.P. Morgan client, Kelly’s optimism supports a belief that his own career will take care of itself—as long as he is fully engaged and working to the best of his ability to resolve his clients’ problems.

Leadership

Beyond technical expertise, strategic thinking and the ability to take decisive action, a leader inspires a sense of mission and purpose. The leader’s confidence engenders assurance. The leader’s empathy fosters loyalty.

General Electric, headquartered in Fairfield, Conn., has an exceptional record of developing leaders across industries and functions.

Jay Lapin became president and CEO of GE Japan after serving as general counsel of GE Appliances. “GE insists that lawyers become part of the busi-

THE CLO-12: LAWYERS TURNED CEOs

Chief Legal Officer interviewed 12 lawyer-CEOs and found them all to share similar leadership qualities, but they’ve taken very different career paths. Current positions are shown in italics.

ANN C. STERN BERZIN

CHICAGO '77

Financial Guaranty Insurance Co.: Former CEO (Previously General Counsel) *Wood, Dawson, Smith & Hellman*: Partner



FRANCIS S. BLAKE

COLUMBIA '76

The Home Depot Inc.: Sr. Vice President, Corporate Development

United States Department of Energy: Deputy Secretary *GE Power Systems*: Sr. Vice President, Business Development (Previously General Counsel) *Swidler & Berlin*: Partner *U.S. Environmental Protection Agency*: General Counsel *Vice President George Bush*: Deputy Counsel

MICHAEL J. CRITELLI HARVARD '74

Pitney Bowes: CEO (Previously Secretary & General Counsel) *Ross & Hardies*



GREGG L. ENGLS

YALE '82

Dean Foods Co.: Chairman & CEO *Reddy Ice*: President *Clerkship*:

Judge Anthony Kennedy, U.S. Court of Appeals, 9th Circuit



STEVEN F. GOLDSTONE

NYU '70

RJR Nabisco Holdings: Former CEO *Davis Polk & Wardwell*: Partner



HENRY HUBSCHMAN

HARVARD '73 (Joint degree: Law and Public Policy)

GE Capital Aviation: CEO *GE*

Aircraft Engines: General Counsel *Fried, Frank, Harris, Shriver & Jacobson*: Partner *U.S. Department of Housing and Urban Development*: Executive Assistant to Secretary

ness team and evaluates and measures them by the same criteria as their business peers,” he explains.

Jeffrey Kindler’s experiences as GE’s former head of litigation (and as general counsel of McDonald’s and CEO of Boston Market) taught him the difference between leadership and management. Today, as Pfizer Inc.’s general counsel, Kindler continues to interpret this distinction.

“Managing implies supervising people and telling them what to do,” he says. “Leadership inspires creativity and self-initiative among the talented people who comprise the team. None of us is as good as all of us. A leader helps realize the team’s collective potential by establishing a vision, setting goals, clarifying expectations and providing resources. Leadership unleashes the full power of the team.”

Hubschman knows that he must be “willing to look in the mirror and to face reality. Leaders cannot live in a dream world.”

At GE, leadership training includes an annual 360-degree review. Ann Stern Berzin recalls her initially painful experience. She was promoted from general counsel to CEO of GE’s Financial Guaranty Insurance Co. soon after its 1989 acquisition. GE hired Jack Gabarro, a Harvard professor and author of “Managing Your Boss,” to coach her on site.

“Gabarro prepared me for the 360-degree feedback,” Stern Berzin says. “He told me that afterward, I might want to go home and fall on the kitchen knife. By my fourth year, it got a lot easier.”

Anticipate Risk, Resolve Crises

In 1995, Steven F. Goldstone became the sixth CEO of RJR Nabisco Holdings since Kravis Kohlberg Roberts & Co.’s 1989 record-breaking \$25 billion leveraged buy-out. Goldstone saw a “lethal combination of problems” confronting RJR: crippling LBO-debt, furious shareholders,

corporate raiders, demoralized management, missed earnings targets, nervous bondholders, declining market share, eroding brand value and potentially devastating liability from tobacco litigation. He knew the odds of executing a winning strategy before the clock ran out were slim.

Ironically, Goldstone inherited battles he had predicted when he represented RJR Nabisco against KKR’s LBO as a Davis Polk partner. He knew that as CEO he would not be winning popularity contests in the near-term.

“Do it hard. Do it fast. Take the pain at once and do things right,” he says.

Drawing upon his litigation and transactional experience, along with his business judgment and appreciation of fiduciary duty to shareholders, Goldstone created multidimensional, elegant, brilliant and effective strategies. In March 1989, he sold the international tobacco business and raised \$8 billion—eliminating RJR’s debt.

“Managing implies supervising people and telling them what to do. Leadership inspires creativity and self-initiative among the talented people who comprise the team.”

—JEFFREY KINDLER



RANDALL K.C. KAU

YALE '74 (Joint degree: Law and Economics)

Zurich Capital Markets: Founder, former CEO & Chairman **Sullivan & Cromwell:** Partner **AIG Financial Products:** Vice President **U.S. Treasury:** Assistant to Secretary



EDWARD J. KELLY, III

VIRGINIA '81

Mercantile Bankshares Corp: President & CEO **JP Morgan Chase:** Managing Director & Head of Financial Institutions Group (Previously General Counsel & Secretary) **Davis Polk & Wardwell:** Partner **Clerkship:** Justice William J. Brennan, Jr., U.S. Supreme Court



JEFFREY B. KINDLER

HARVARD '80

Pfizer Inc.: Sr. Vice President & General Counsel

Boston Market: CEO **McDonald’s Corporation:** Executive Vice President & General Counsel **General Electric Co.:** Sr. Litigation Counsel **Williams & Connolly:** Partner **Clerkships:** Justice William J. Brennan, Jr., U.S. Supreme Court; Judge David L. Bazelon, U.S. Court of Appeals. D.C. Circuit **Federal Communications Commission:** Office of the General Counsel

JAY F. LAPIN

HARVARD '68

GE Japan: Former President & CEO **GE Appliances:** General Counsel **U.S. Federal Government:** Deputy General Counsel **Wilmer, Cutler & Pickering:** Partner

ROBERT C. POZEN

YALE '72 (Joint degree: Law and Economics)

Harvard University: Lecturer in Public Policy, John F. Kennedy School of Government

President’s Commission to Strengthen Social Security: Member **Fidelity Management & Research Co.:** Former President (Previously Managing Director & General Counsel) **Caplin & Drysdale:** Partner **SEC:** Associate General Counsel **New York University:** Law Professor **Harvard Law School:** Adjunct Lecturer



PETER A. THIEL

STANFORD '92

PayPal, Inc.: Co-founder, CEO **Thiel Capital Markets, LLC:** Managing Member **CS Financial Products:** Derivatives Trader **Sullivan & Cromwell**

Now unfettered by financial restraints, Goldstone uncoupled the tobacco and the cookie companies through a tax-free spin-off to shareholders. In June 1999, he returned the management of the tobacco company to Winston-Salem, N.C., eliminating costly infrastructure. He negotiated earlier settlements with the state attorneys general and eliminated potentially massive liability from state litigation. This allowed him to avoid time-intensive congressional lobbying and made convincing other tobacco companies to reach a national settlement unnecessary.

Because the new Nabisco had residual tobacco liability, it traded at a discount and became the target of corporate raiders. Once again, Goldstone maximized shareholder value by selling Nabisco's Brands to Philip Morris Cos. Inc. and conducting an auction for the holding company. This strategy resulted in a huge win for the shareholders.

Heavily Regulated Businesses: A Path from CLO to CEO

In 1997, FMR Corp. chose Robert C. Pozen, its general counsel of 10 years, to become president of its mutual fund operation, Fidelity Management & Research Co. Many questioned how Fidelity's lawyer could improve business performance. But those critics overlooked Pozen's training as a lawyer and economist. As general counsel, Pozen was a top problem solver—he launched Fidelity's entry into the Japanese mutual fund business and created Fidelity's Charitable Gift Fund in 1992. He also served as a director of Fidelity's credit card bank. The legally intensive mutual fund industry provided Pozen with a natural opportunity to demonstrate his strategic prowess.



DOONNA TEREK

● June Eichbaum is a partner with Heidrick & Struggles. jeichbaum@lawexec.com

The lawyer-CEO has the additional training to proactively use the law as a creative tool to shape the rules of industry engagement, craft innovative deal structures and navigate successful business solutions through complex regulatory environments.

● Victoria Reese is a principal with Heidrick & Struggles.

“To the extent that there is a closer relationship between legal and core business issues in an industry like mutual funds, it is easier for a lawyer to make the business transition,” he says. “The way to be a problem solver is to view the problem as broadly as possible. If you just answer the question posed it may be because you haven't fully understood the full business problem.”

Morningstar, Inc. credits Pozen, now a Harvard professor, with increasing earnings by emphasizing disciplined investing, institutional controls and well-considered asset allocation. He increased the assets under his management from \$500 million to \$1 trillion in five years.

As Pitney Bowes Inc.'s general counsel, Michael J. Critelli was “always fascinated by the unique regulatory relationship between Pitney Bowes and the U.S. Postal Service, which is neither a public service nor a private sector company.”

As CEO, Critelli uses his knowledge of the industry combined with antitrust, patent, administrative, environmental and even constitutional law to help shape the “rules of engagement for the industry.” In October 2001, just when the country was confronted with bioterrorists using the mail as a delivery system, Critelli spoke on behalf of the Mailing Industry Task Force on how the private and public sectors could work together to create trackable, traceable mail as a bioterror deterrent.

The heavily regulated power industry is another natural home for a lawyer working at the top. Francis S. Blake recently served as deputy secretary for the U.S. Department of Energy—executing policy decisions for the department, managing its annu-

al \$19 billion budget and providing direction to 100,000 federal and contract employees. Blake established his industry expertise as general counsel for the U.S. Environmental Protection Agency and moved to GE as general counsel of GE Power Systems.

He described his transition from general counsel to head of business development for GE Power as “organic, given the legally intensive nature of the power business.” Most recently, former GE executive Robert L. (Bob) Nardelli, now CEO of The Home Depot Inc., named Blake his executive vice president of strategy, business development and corporate operations.

A Unique Matrix

Lawyers who evolve into business leaders possess a unique matrix of shared personal qualities: risk tolerance, optimism and leadership. These qualities may differentiate them from other lawyers, but not necessarily from other CEOs. Are there qualities that, in turn, differentiate these lawyer-CEOs from other CEOs?

Our anecdotal sense is that the lawyer-CEO, like most CEOs, has a deeply ingrained sense of principle and fiduciary duty to shareholders. But the lawyer-CEO has the additional training to proactively use the law as a creative tool to shape the rules of industry engagement, craft innovative deal structures and navigate successful business solutions through complex regulatory environments.

In our next column, we'll delve into the transforming experiences of these special individuals—and we'll tell you what they think about lawyers from their new perspectives. ●