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Law Director | Cleveland Department of Law

Police Management and Leadership

The Reform Experience of the Cleveland Department of Law

When Mayor Jane L. Campbell in early 2002 gave me the opportunity to serve as the City of Cleveland's law director, although I knew I was taking on a turnaround challenge, I was taken aback by the intense onslaught of dire warnings I received.

Several federal and state-court judges approached me and called the department "a disaster." One judge told me I "did not know" what I had gotten myself into. Another reported that members of a court had called a prior law director in for an upbraiding. The judges complained of missed court appearances, too-frequent changes in lawyers on cases, lackluster research, sloppy written and oral advocacy, and sometimes unprofessional conduct to the court and its staff. After the exhortation, bemoaned the judge who told me this, nothing changed.

What these judges did not know, nor did I at the time, was that outside perceptions of the Cleveland Law Department had become distorted because of a few whose aberrant behavior undermined everyone else's reputations, lack of accountability, a culture of fear and poor treatment, low morale, high turnover, disinvestment, and resultant understaffing. I was fortunate that after hearing the scary reviews – but before I started – I received some well-timed advice from a law-department alumnus now a leader in a prestigious large private firm.

He cautioned that despite the bad things I surely must be hearing about the department – and the fact that many talented career staff with decades of experience had fled – truly incredible lawyers had toughed it out and remained. He identified some by name, including the well-respected Richard F. Horvath, the chief corporate counsel who has been at the heart of every major city deal since the 1970s and whose institutional experience is priceless. Don't jump to paint everyone with a broad brush, the alum said. There is an entire community of alumni well wishers "out there" who want to see the department succeed again and reclaim its past glory. Don't brandish a hatchet where a scalpel will do.

It was great advice.

Cleveland's Department of Law is a firm that has produced a U.S. Supreme Court justice, countless judges at every level, the managing partners and founders of major law firms, the general counsels of major corporations, a U.S. cabinet secretary, mayors and members of city councils, journalists, and other nationally, regionally, and locally distinguished leaders.

Cleveland's Law Department represents and advises the mayor, city council, and the departments that provide the traditional government services you would expect (e.g., Public Safety, Health, Public Service, Parks, etc.). But the department also serves as general counsel to several major businesses the city operates. These include the Cleveland Water Division, the 10th largest public water utility in the country; Cleveland Public Power, the largest public-electric utility in the state; and Cleveland Hopkins International Airport, which itself has a billion-dollar-expansion program underway.

So Cleveland's legal work touches every twig in the taxonomy of law, from real estate and development to environment and health to complex business litigation and high-stakes torts, to civil-rights defense and constitutional law including the First Amendment, to complex labor negotiations and employment, to regulatory and legislative interpretation, to criminal law and procedure, to public securities, to utilities and aviation, even the occasional intellectual-property matter – you name it, the Cleveland Law Department does it.

I would like to say the Cleveland Law Department's recent improvements are solely or even primarily because of me. I would like to, but that would not be true. The potential of the Cleveland Law Department was already there waiting to be catalyzed. The department's storied history is but one measure of that.

As a fellow whose management experience consisted of leading large volunteer organizations and always second-guessing my supervisors, I came to the department enthusiastic to help it refooster a culture of:

- Excellence, combined with humanity and decency;
- Ethics, professionalism, and integrity; and
- Self-sustaining accountability.

These are not just words – each concept is pregnant with meaning. As Max Depree, chairman *emeritus* of the innovative furniture maker Herman Miller, Inc., writes in the wonderfully readable *Leadership is an Art* (2004),

"The first responsibility of a leader is to define reality. The last is to say thank you. In between, the leader is a servant." The Law Department leadership team and I defined our reality – which is that we had some serious challenges. We then set about as servants to develop and implement strategic action steps to define and achieve our future reality. What follows are a few examples.

EXCELLENCE, COMBINED WITH HUMANITY AND DECENCY.

🔑 Stopping at Nothing (except still modest pay) to Recruit the Best.

We improved salaries somewhat, but given the economy, not quite to where they ought to be. We cherry-picked and recruited diverse, experienced, highly credentialed staff at the partner and associate levels from top firms, corporations, and other government offices to join the excellent staff already in place.

🔑 The Best Means Diverse and Diversity Means Synergy

Our staff came from varying socio-economic, racial and ethnic, and practice-setting backgrounds. Our line-attorney staff went from 23 percent to 34 percent minority and our attorney managers went from 20 percent to 31 percent minority. The City Prosecutor's Office (the Law Department's criminal division) went from having no minority prosecutors to becoming a majority-minority operation. We are the most diverse law firm of our size or larger in Cleveland and perhaps Ohio. This is a mark of excellence because the diversity – well nurtured and managed – creates synergy in our approach to problem solving.

🔑 Retaining the Best

Recruitment without retention strategies, however, is meaningless. We formally surveyed our staff and addressed their concerns. As zealously as we stalked the best recruits, we improved morale and reduced voluntary attorney turnover in our 85-lawyer firm by 50 percent, and then 50 percent again, over each of the first two years, as we expanded to do good work in-house. Today, the energy and excitement in the department is palpable. We are like the low-rent version of *The West Wing*. Things are happening, the conversations are flying fast and furious in the hallways and offices, and the camera angles are disorienting. It's just that our story is about building a better city and not about warding off nuclear annihilation. (Some days it is more like the legal version of *Candid Camera* – you can't believe the crazy things that happen all day and you keep thinking Mr. Funt is going to walk out and tell you it's all a joke.)

🔑 Sink or Swim – Learning by Doing

The counterintuitive thing about government legal work is that it is less hierarchical than large-private-firm work. We do not have bodies to spare. Nor do we pass down smaller and smaller drops of work through a filter from rainmaker to peasant, with the peasant clueless about the overall strategy. When we slashed outside-counsel spending by almost 90 percent from a high of \$7.4 million in 2000 (more than the city of Los Angeles that same year) to an estimated, at the time of this writing, \$850,000 for 2004, our attorneys had to stretch to the highest levels of competency in the profession and take on more responsibility. (The outside-counsel reduction, incidentally, is a testament to the mayor's political courage and fiscal restraint in that it did not exactly make many outside firms happy. But because every marginal dollar we invested in-house reaped at least a \$16 return in reduced outside-counsel spending, our strategy permitted those resources to be spent on more productive uses.) And so, we did in-house the mayor's entire deal to bring SYSCO Food Services, Inc. and its 600 jobs into the city – real estate, environmental, and legislative work that would have cost us at least \$500,000 on the outside.

🔑 Learning by Doing Even When Doing it with Outside Counsel

The outside-counsel-retention policy we developed permits engagement of outside attorneys only in conflict-of-interest situations, where we need unique expertise (for example, we have no international-trade lawyers should such an issue arise), or where the law department's in-house capabilities are genuinely saturated. We do not permit the outside attorneys whom we engage ostensibly for their own unique expertise to use their own inexperienced lawyers to assist; they must use law-department lawyers as co-counsel to help manage the work, control costs, and develop our own in-house experience. (We tweak outside counsel telling them that if their remaining associates want to do such interesting work, they should come work for us full time like their other associates have!) Thus, our labor negotiations have been a partnership between experienced outside counsel and in-house lawyers with varying ranges of experience. On the first round of convention-center negotiations, we kept to about \$150,000 outside-counsel spending using two law firms for three straight months, because law department lawyers did the rest. We became a stronger law firm for it.

🔑 Plain English

We adopted and rigorously enforce a plain-English writing policy to rid our pleadings, transactional, and legislative documents of Legalese (e.g., herein; hereof; thereof; comes now the plaintiff, by and through counsel; etc.). This makes our work more understandable to our audiences including courts and the public we serve. In transactional documents and legislation, it makes our work more interpretable and enforceable. We all underwent legal-writing training by Judge Mark Painter of the First District Court of Appeals (whose seminar I highly recommend), author of *The Legal Writer: 40 Rules for Legal Writing* (2d. ed. 2003). We also adopted legal-writing guru Bryan Garner's *The Redbook* (West 2002) as our mandatory style manual. While this is a topic for an entire separate column, I cannot overstate how adopting plain-English style led to better court, dealmaking, and legislative results. It also exposed potential logical flaws needing correction. One judge famous for denying summary-judgment motions told me she granted our motion in one case because the brief was "so [expletive deleted] understandable." In one information-technology transaction, we refused to sign off on technical mumbo jumbo in a document our clients were prepared, even eager, to accept. Our clients, initially irritated, were then forced along with the opposing parties to realize they all had had different beliefs about what the gobbledygook clauses meant. The plain-English draft corrected that. Plainly put, plain English makes for better lawyering.

🔑 Working the Job and Not the Hours – and Being Ready to Be Crazier than Your Opponent

In one high-profile lawsuit, we sent a particularly obnoxious counsel from a big, hoity-toity New York law firm packing back home, defeated in litigation (okay, they voluntarily dismissed, self-declaring victory) because we just out-hustled them. We beat a California firm repeatedly in environmental and aviation matters, and obtained a court order that they pay the city attorneys' fees. (In the cases where we are entitled to such fees, we can legally collect our "market rate" even though we are hardly paid at market!) We make it clear to our opposing counsel that we get paid the same way whether we work many hours or not, so we may as well all work on this fun matter really hard, recruit volunteers (who are in abundant supply because our work is fun), and otherwise throw ourselves into it – unintimidated by the "big firms" on the other side. And we do all of that. Cases dismissed.

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keys to the city

🔑 The Best Defense is a Good Offense

Although the city's litigation traditionally had been largely limited to defense work, we are taking on more affirmative civil-enforcement work. This includes pursuit of corrupt contractors or employees who have defrauded the city, and civil receiverships of abandoned properties. The city—perhaps a high-profile target because some incorrectly view it as having unlimited resources—attracts a lot of crank lawsuits. We refuse to settle such cases specifically and are tightfisted with taxpayers' money in defense cases generally. Many attorneys who used to count on getting *something* for their troubles in weaker cases have stopped coming back. Some have joked begrudgingly that it just isn't worth the trouble anymore. In one particularly silly case, a business plaintiff has sued the city because of its efforts to stop it from committing fairly blatant code violations harmful to its residential neighbors. The city has counterclaimed. The week after news of my impending departure hit the newspapers, plaintiff's counsel (whose last, best settlement demand was for total, unconditional, city surrender) e-mailed the responsible assistant law director saying, "Now that SC is gone, why don't we talk about settlement[?]" It did not surprise me that the attorney reminded opposing counsel that settlement of a case on any terms harmful to Clevelanders remains and will always remain unacceptable.

🔑 Leading Professional Organizations

We require, and subsidize when feasible, *active* membership—especially leadership—in professional organizations. Our attorneys include the immediate past chair and current secretary of the Cleveland Bar Association's government attorneys' section, the vice chair of its environmental section, the chair of the young lawyers' section of the Cuyahoga County Bar Association, and other officers of the Commercial Real Estate Women (CREW), Norman S. Minor Bar Association, Ohio State Bar Association, Cuyahoga County Law Directors' Association, and countless others. I put on a showcase trial at the International Municipal Lawyers' Association's mid-year meeting. One lawyer was inducted into the prestigious American Inns of Court. We teach many CLEs for others, and this spring, we will pit on our own, massive CLE program for Cleveland Law Department alumni and others. All of these things have enhanced our skills, practices, and reputations in the legal and judicial community.

🔑 Capitalizing on Youthful Energy, Enthusiasm, and Devotion to Public Service

We built a public-private partnership between the Law Department and Case Law School. Bright law students serve the department for free in exchange for a municipal-law course in which top department attorneys serve as adjunct faculty. Cleveland-Marshall students are also welcome. The students (as many as 30 in the summers and fewer during the school year) bring energy and creativity to our work. And our work is better researched and thought out as a result.

🔑 Cutting-edge Technology

We invest in state-of-the-art technology, from desktops, to laptops, to personal-digital assistants, to document-management systems, to presentation software. This makes our internal communications more-efficient and our external and court communications more persuasive.

🔑 Internal Decency

As Guido Calabresi, my law-school dean, used to say every year to incoming students, "Excellence without humanity and decency is nothing! It's nothing!" While we expect nothing less than the highest level of performance from attorneys and support staff (see "Accountability," below), we just won't tolerate abuse. The attorney who berated a support-staff person, where constructive criticism would have sufficed, was reprimanded. He understands it can never happen again

—or the department will choose to retain the support-staff person over the attorney, even if he's the Laurence Tribe of his practice area. How many law firms can honestly say that? These values matter to us.

🔑 Saying "Congratulations," "Thank You," and "Good Job"

It sounds so simple, but we send an e-mail around every time someone in the department achieves something significant. And we make sure the relevant clients receive a copy. I know this is important, because one attorney keeps a file full of them. While you can't eat "thank yous," it's good to know your work matters.

ETHICS, PROFESSIONALISM, AND INTEGRITY.

🔑 Ethical Issue-spotting and Consultation

We developed a culture in which all attorneys are encouraged to issue spot and consult with me, or others designated, regarding ethical dilemmas. When in doubt, consult, is the spirit.

🔑 Self-reporting and Investigation

We require all attorneys to self report if they are accused even informally of misconduct, justifiably or not. We investigate each such allegation thoroughly and respond to complainants, whether they ask us to or not.

🔑 Reporting Violations

We do not hesitate to report outside attorneys about whom we have unprivileged knowledge of plain apparent violations of the Ohio Code of Professional Responsibility—which is required under oft-ignored DR I-103(A). We view this obligation, while unsavory, as vital to the self-regulation of our profession and to the protection of our clients.

🔑 Raising Standards for Prosecution

Although the Code of Professional Responsibility requires only that a prosecutor have probable cause before filing criminal charges, our criminal division (the City Prosecutor's Office) matched the U.S. Department of Justice's standards when I was there and raised our charging standard to "beyond a reasonable doubt"—the standard for conviction by plea or at trial. This has sharpened our approach to evidence gathering and made us more careful about use of the criminal process. While it sounds obvious, the following commitment is easier said than done when you work in a climate in which every decision is subject to media and public scrutiny and second-guessing: we never permit political considerations even to be discussed, much less considered, in making prosecutorial decisions.

🔑 No Such Thing as a Free Lunch

When socializing with those doing business and those seeking to do business with the city, we pay for our own meals, tickets, etc.

🔑 Avoiding Odd Internal Pressures

We discourage gift-giving to supervisors except for the most special of occasions, and then only if the gifts are *deminimus*.

🔑 The Golden Rule

Notwithstanding our occasional irritation with particular East and West Coast lawyers who seek to confirm Midwestern stereotypes about them, we created a culture of professionalism toward other attorneys and parties. All of this is squarely in the spirit of the Ohio Supreme Court's terrific *Statement on Professionalism*. One federal judge recently told me with pride about an instance in which one of our attorneys was particularly kind and helpful to an opposing party who was representing himself. Besides being the right thing to do, such efforts pay dividends to the credibility of all our attorneys.

🔑 Reputations with Clients and Throughout the Entity

The Law Department is uncompromising in its integrity. Eventually, this has become known throughout city government, from the executive branch, to the

council, and to the municipal-court administrators who are also our clients. Even line city workers have come to know they can come to the Law Department and report unethical or otherwise improper conduct in their departments, no matter how high up, and it will be investigated thoroughly. And, if the allegations prove founded, we will seek to have the misconduct addressed.

ACCOUNTABILITY

🔑 Continuing Reassessment

By surveying and taking a listening tour of our clients, we performed a top-to-bottom reassessment of our quality, mission, and service delivery.

🔑 Moving Faster

We declared an end to the era in which clients could truthfully claim their work was “Stuck in Law.”

🔑 Comprehensive Performance Criteria and Evaluations

We developed a comprehensive performance-evaluations system – the first that had been implemented in years. The system is on a scale of 0 to 8, where a “6” is an excellent score of meeting our already high expectations, and an “8” means you are practically a Nobel Laureate of that criterion. A “5” is a great score and means that like most human beings, you can tweak up your performance a bit. The system measures traditional dimensions of legal ability such as legal research, writing, and oral-communications skills. But it also addresses concepts like active membership in professional organizations (and thus positive ambassadorship for the Law Department), internal cooperation, timely responsiveness to clients, creativity, willingness to take on new work and challenges, and self organization. Through many painful calibration sessions, we resisted the urge to grade inflate and were tough, but honest, fair, and constructive in our assessments. We helped many taken-aback attorneys and support staff – who had never received feedback at the highest standards of our profession – develop concrete professional-development plans to improve. (They did.) We counseled out a few. We rewarded others. And we permitted line-attorneys to evaluate their supervisors (including me – apparently I am a snappy dresser but in my reform-minded zeal could be viewed as arrogant and didn’t say “hi” enough).

🔑 Tying Compensation to Performance: What a Concept

We tied compensation to performance (unusual for government) and other factors such as practice-area marketability and experience level.

🔑 Balancing Quality Control Where it Really Matters and Effective Delegation

A written-advocacy committee and I personally review and often heavily revise all case-dispositive motions and appellate briefs. Our brain trust “moot courts” all critical appellate oral arguments (we can do that in government because we do not bill by the hour). And so we win a lot. At the same time, we delegate initiative and responsibility heavily. For example, where the law director previously had to sign off after layers of review on the smallest settlement (including claims as small as \$25), we delegate settlement authority of up to \$10,000 (although legally no settlement is final until I sign at the end).

🔑 Leadership by Walking Around and an Open-Door Policy

Managers, including I, have an open-door policy. As Lawrence G. Green discusses in *Managing Partner 101: A Guide to Successful Law Firm Leadership* (ABA 2001) (available through the Cleveland Law Library), both walking the hallways and a general open-door policy are critical to accountability within the firm. People take advantage of it and we learn a lot about what is really going on.

🔑 Not Hesitating to Make Changes

Again, we counsel out serious underperformers (our attorneys are at-will employees). We even manage within the context of a civil-service system to hold support staff accountable, improve their performance, and nurture their pride in the firm and its mission. It’s not just a job; it’s proud service to Cleveland.

🔑 Fiscal Accountability and Cost Containment

Beyond the dramatic outside-counsel reductions, we slashed spending on books we were not using, have renegotiated amazing, fully loaded Westlaw privileges that soon will include free public access from the Cleveland Law Library in City Hall (and perhaps eventually wi-fi access from Strawbridge Plaza from your laptop). We do not pay outside firms for their use of computer-assisted research services. That used to be called “the library,” and is thus overhead that should be baked into the billing rate. We often harness the power of the marketplace to seek out multiple proposals for outside-counsel work, even though we are not legally required to do so. We often obtain outside services at little to no cost, because the prestige of the city legal project is so great and of such potential future marketing benefit to outside firms. With the Mayor’s encouragement, we never permit political considerations to determine whom we hire, inside or out. We have shifted as much of our resources as possible to our people, because they are what make the firm work.

The Eastern philosopher Lao-Tzu observed, “A leader is best when people barely know he exists. When his work is done, his aim fulfilled. They will say, “We did it ourselves.” Or, as Wal-Mart’s founder Sam Walton put it, “Outstanding leaders go out of their way to boost the self-esteem of their personnel. If people believe in themselves, it’s amazing what they can accomplish.”

The Cleveland Law Department’s people believed in themselves before, and rightly so. But they came, just as rightly, to believe in themselves even more. They will and should say they did it themselves. They created the kind of law firm in which I had always wished I worked.

And as the last task of leadership, I thank them for it, because I got to do so. 🏆

Subodh Chandra, Cleveland’s outgoing law director, also recommends On Leadership (1989) by John W. Gardner for further guidance on the tasks and attributes of leaders. Chandra hopes you get to work in the kind of firm described above too someday – because it beats the alternative. If you would like to discuss improving your practice setting, please write him: Subodh.Chandra@StanfordAlumni.org.

Congratulations
to all the new lawyers who just passed the bar exam!

The CBA held its New Lawyer Reception on Nov. 18 in the new Bar Center.

Both new and old lawyers have some fun and network at the same time.

If you are a new lawyer and would like more information on the benefits of membership in the CBA, please contact Donnie Long, director of membership, at (216) 696-3525 or dlong@clevelandbar.org.