

**TIME TO GET YOUR  
BEARINGS: THE FIRST  
HUNDRED DAYS**



## **It's Not My Circus and Those Are Not My Monkeys**

Whatever you do, don't let other people make you their sheriff. Your new internal business partners are going to see you coming from a mile away. It doesn't matter how old or young you are. You can be an experienced former big law partner, or you can be right out of law school. You might have so much gray hair that it takes an entire case of Just for Men gel to look the ripe young age of eighty, or you might be so wet behind the ears that Niagara Falls couldn't keep up.

It won't matter. There will be a few dozen internal clients at your new corporate office who see you as their personal Johnnie Cochran and John Wayne all rolled into one. They have a hundred axes to grind and scores to settle. Other lawyers in the general counsel's office have blown them off or told them it wasn't a problem for the legal department. None of that will matter. You are new. You don't know any better. You will be anxious to help solve problems, and they smell your desperation for an issue to solve.

Don't fall prey. I had a friend who started at his company and had no idea what he was walking into. The general counsel saw himself as the next chief executive officer (CEO). The chief financial officer (CFO) and chief operating officer (COO) also saw themselves as the next CEO. There was a fight for resources across the board. Each silo of operations was in an internal struggle to climb the ladder of importance in the portfolio of company products and offerings. Spin-offs and acquisitions were

ripe in the industry, and it was a struggle to remain the shiny offering in the 10K street report.

These weren't just internal struggles for dominance; they were career life-and-death to the combatants. For the winners, financial rewards, salary bumps, stock offerings, and job security. To the losers, jealousy and scheming if they were able to stay, and more likely the career search after being asked to resign. This is an extreme example, but there is some variation of this playing out in most companies today.

Some battles are minor skirmishes for resourcing between top sales executives. Some are as serious as those at my friend's new company. Either way, the battle is about to get a new front. At least one of the combatants, and maybe all of them, will see you as a shiny new tank division to be used in a flanking maneuver.

It starts so simply. You're being introduced to all your new colleagues in meeting after meeting. You're trying to impress and put your best foot forward. You want them to like you, as coworkers and future friends. You want them to respect you, as a lawyer and as a leader in the company. You want them to think more highly of you than your friend Dave<sup>1</sup> does, who we already established wasn't as impressed with your knowledge and potential ability as your new employer.

But they aren't just sizing you up. They are also trying to plant seeds in your head. They are valuable members of the team. They can help you navigate the treacherous uncharted waters you have just sailed into. This way, when they talk to you privately during the first lull in your first day, they can make you their sheriff. And there's always the same reason why.

They have reached a stalemate in the trench warfare of their interdepartmental struggle. They need someone to tell the other side that they should prevail. There is no more surefire way to succeed in that than to get an opinion from the legal department.

"I was just starting to see it your way, but Legal just let me know that what you wanted was illegal."

And with that, it will have become your circus, and they will now be your monkeys. It's too bad. It didn't have to be that way. You could have

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1 If you don't know who Dave is, you should go back and read the intro. I worked hard on that section.

bought some time. So what should you do? First, listen, not just to the issue they are bringing you, but for clues that there is a backstory. You'll spot it if you listen carefully. It won't sound like what you are used to hearing at your firm from a new client. In those cases, you knew who the other side was. You might have had a client or two hide a ball every now and then, but you knew where to look and what questions to ask to get the whole story.

These situations are different. It won't be natural to assume that there is an ulterior motive and that there is an internal struggle at play. Your instinct might suggest to you that everyone inside the company has the same goals. Your instinct would be wrong. Listen for some key clues. They've been dealing with this for a while; it isn't that important, just trying to get your opinion. Or the really sneaky one, the casual question-drop on the way out the door after talking about nothing important at all, the sneaky back-door question.

When you get those, remember this advice: Don't bite. First, ask if they've already reached out to anyone else in Legal. We'll get to forum shopping later, but for now, just ask. Then ask them for some information they don't already have. At that point, one of two things will happen. Either they will go diligently search for the data or information you need and send it to you, or they will just go away. If it is the former, there is now a decent chance that it is an actual issue.<sup>2</sup> If it isn't, you will at least have more information to use in an effort to smoke out the potential internal conflict and decide if it is really a legal issue or just a business decision in search of legal cover.

If it is the latter, and they just go away, you have already navigated your first internal in-house minefield. You would be surprised how often people really just go away when asked to do just a little work before you have enough to help them. This is a telltale sign that it wasn't a real legal issue for you to deal with. If it is, they will be back.

This is harder than it sounds. You're new, and you want to help. You were hired for your knowledge and to solve problems. Turning people away seems counterintuitive. Don't let it be. You aren't turning them away.

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<sup>2</sup> This comes with a caveat. Don't be an idiot. A subpoena or allegations of internal problems that may be actual crimes require immediate attention. They won't go away. If they do, be even more afraid.

You are doing two things: (1) You are testing the issue to see if it really needs a legal opinion and you are actually doing your job; and (2) you are asking for the information you need to assist you in formulating an actual informed opinion. Rarely, if ever, will all the facts be present in your first meeting or by way of the first e-mail raising the issue.

This simple act will keep you from walking headfirst into an internal battle. You won't start your new career off as a sheriff in a business struggle that shouldn't be a legal issue, and you won't make enemies on your first day. It isn't your circus—don't accept the monkeys.

## **It's Amazing How Many Problems Go Away If You Just Do Nothing**

Not everything is an emergency. The majority of the time, even the things that seem like emergencies have a way of working themselves out without intervention. There is a big difference between putting your head in the sand and keeping your eyes wide open and taking a pause before acting.

True emergencies require immediate attention. Is the building on fire? Are there armed agents from an overly acronymed agency at the reception desk? Worse yet, are those agents already searching another facility because the receptionist let them in and didn't think to call you first but now thinks it would have been a good idea? Those are emergencies. If one of those isn't happening, take a breath. Make those around you take a breath.

Rushing in may ease your deep desire to do something—to do anything. But it often just makes it worse. Sometimes, doing absolutely nothing is the best bet. Wait for the next move and then act, but act with thoughtful deliberation.

I'll give you an example. There was a time not long ago when the number of class actions over unsolicited faxes was rising faster than the temperature of Earth.<sup>1</sup> A few jerks well-intentioned home-based entrepreneurs thought that carpet-bombing potential customers with advertising

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1 If you're a believer in that science about global warming. If not, it was rising faster than the temperature of the Saharan Desert at high noon.

faxes would grow their business. They never considered that the plaintiffs' bar members would support their new yacht addiction off the settlements that would follow.<sup>2</sup>

They also didn't seem to care that the law-abiding businesses that had sent legitimate faxes to actual customers would get caught in the cross fire. But alas, that was the situation. Pretty soon, every business that had ever sent a fax got a demand letter. It went something like this: "Pay a little now or else we will go after every fax you've ever sent at the statutory rate of \$500 per fax, which we estimate will cost you \$X million. Call immediately or we intend to file the attached complaint."

I know what you're thinking. It was the same thing that every business owner and inside counsel thought at the time:<sup>3</sup> "Oh crap! It's an emergency!" Well, it wasn't. It wasn't even close. It was a fishing expedition. Plaintiffs' lawyers were sending out demand letters to every company in every city that had ever sent a single fax. They couldn't work every case if they hired every unemployed lawyer laid off or whose hiring was deferred in the great law firm market correction of 2009–2010. It was impossible.

But you know what was possible? If you were a smart and entrepreneurial plaintiff lawyer, you would send thousands of letters and just wait for a couple of in-house counsel to call you. Now you had a fish on the line. You then let the **extortion** honest and fair legal process begin. The in-house counsel would explain that all their faxes were sent to existing clients in accordance with the law. And it would all go downhill from there. The costs start escalating, the demand gets larger, and pretty soon there is a class action with the company name all over it.

Do you know who wasn't sweating? The in-house counsel who did nothing. There were plenty of in-house attorneys who didn't rush in. They took a breath and did zero, zilch, nada. At least nothing visible. Like a duck on the water, all the action was occurring out of sight, under the water, out of view of our plaintiff's counsel. They looked into faxes sent to see if there was any actual exposure. They interviewed marketing managers and sales personnel to see if any had gone rogue and sent some unapproved

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2 This isn't every plaintiff's lawyer, or even most. Our system needs someone to fight for the rights of those without power. But mass fax litigation? Come on.

3 Because I hadn't written this survival guide yet.



faxes. They calculated potential exposure and met with the exec team if it was in any way worrisome.

What didn't they do? They didn't pick up the phone. They took a breath and waited. Would a second notice come? Would a third? Chances were, there wouldn't be another notice. Why? Because the plaintiff's counsel was too busy gutting and skinning the poor fish that bit the hook. She didn't have enough lawyers on staff to work all the lines she dropped in the water. There was never an intention to work them all. They were chum in the water.

I'll give you another example. I was sitting on a nice seaside bench at an ABA TIPS meeting in San Diego on a break between meetings. A great business litigation attorney I know from Chicago was recounting his frustration about several young or new corporate counsels at clients' offices who would call him in a panic about receiving subpoenas from government agencies or from other law firms working on some business litigation matter. They were panicking and wanting action right away.

His frustration wasn't that he was going to bill hours and make money. That was fine, and he appreciated the tuition it would provide for the expensive private school for his daughter. He was more frustrated that these in-house counsel had forgotten so quickly how to handle a third-party subpoena once they went in-house. It didn't make sense. This was as simple as taking a breath and responding with a simple request to narrow the scope or objecting to an overly broad subpoena on a third party. It wasn't to rush in and start a massive document production operation.

They forgot, or never knew, that the best course of action was not to treat it as an emergency, but rather as a simple inconvenience. Breathe, take a moment, and see if it is even requiring a substantive response. Courts rarely make a nonparty go through an arduous production process if the request is unduly burdensome or the likely information is duplicative or can be gained by discovery from a party in the litigation.

Before treating it as an emergency and incurring internal costs and operational interruptions, think about picking up the phone and asking what the subpoenaing party really wants. You'd be surprised at how often it is just something small and inexpensive to gather. You'd also be surprised at how often they don't even know and couldn't articulate it at a hearing if you filed for a protective order. In which case, you're back to doing nothing.

Better yet would be looking to see if the subpoena was even valid. You'd be surprised how many aren't. Do you know what an improperly issued or served subpoena is in most jurisdictions? It's paper. It's nothing. It requires nothing. But knowing that requires taking a breath and looking into it before acting.

Either way, it's surprising how many problems go away if you just do nothing. Even if that nothing involved work behind the scenes that the creator of the problem never sees.