

Partnering Means . . . ?

Interview with Alan E. Davis, Chairman of the Corporate Department, Greenbaum, Rowe, Smith, Ravin, Davis & Himmel

This is the second in a series of interviews with Outstanding Partners of each of the Participating Firms. It is meant to elicit their views as to how they regard partnering with clients. In this interview Alan E. Davis spoke with us as to the way in which Greenbaum, Rowe, Smith, Ravin, Davis & Himmel partners with its clients.

Editor: The term "partnering" is very much in vogue today to describe relationships between corporate counsel and outside counsel. What is the Greenbaum firm approach to "partnering" with corporate counsel?

Davis: To me and to my colleagues at Greenbaum, Rowe, Smith, Ravin, Davis & Himmel, partnering is nothing more than a state of mind that I like to think that we, as a firm, have always had toward our clients. This is true not only with respect to the Corporate Department; but, I believe it to be equally true of all of our departments. We could not have built what we have as a client base today without having practiced for many years the various attitudes which are now summarized in the concept of partnering.

Editor: Can you summarize these attitudes to which you refer?

Davis: Before addressing what I mean by the word "attitude" I think it appropriate to define what I mean by our client base. While the firm is often called upon to serve as outside counsel to Fortune 1000 companies, I think it fair to liken our client base more to what the banks traditionally refer to as the "Mid-Market". In the Corporate Department particularly, we have traditionally served the Mid-Market enterprise. Such enterprises, while usually a corporation, may take any one of several different forms, may be publicly held or privately controlled, but in all respects have as a common thread the fact that the entities are entrepreneurially driven. They are not blessed with large in-house legal departments; far more often, if they have in-house legal capability, it is a small department having no more than one to three attorneys. Often, there may be no in-house capability. Indeed, in such circumstances the outside counsel reports to the Chief Financial Officer or to the Chief Executive Officer. For the purposes of examining partnering attitudes, the nature of the business conducted by the enterprise is irrelevant.

In establishing and maintaining the relationship between the key in-house person, whether he or she is the General Counsel, the Chief Financial Officer or the Chief Executive Officer, and the partner-in-charge at the outside law firm, it is paramount to engender a sense of teamwork and to communicate in a timely, clear and accurate manner. Just as importantly, we want each and every one of our attorneys to hold themselves out to the client with the same commitment and dedication as if he or she were a full-time employee of the client. We expect our attorneys to exhibit attitudes and exercise initiative with enthusiasm to generate a reciprocally positive attitude from the client's management team! To do so our attorneys must also relate with the same esprit to the client's entire organization, other outside professionals, the client's customers and suppliers and the like.

Editor: What are the specific attitudes that permit such acceptance of the firm and its lawyers as part of the client's management team?

Davis: To be specific, not surprisingly, we believe it is a lawyer's obligation to exhibit immediate attentiveness and to attack whatever problem solving comes our way with diligence, thoroughness, timeliness, loyalty, care and professional objectivity. I am speaking here of qualities that will stand out and go well beyond the obligations of a lawyer as described in the Rules of Professional Conduct. Partners in a truest legal sense owe each other special duties such as loyalty and care. It is in the execution of the work by the outside lawyer, no matter what his or her stature in the outside law firm, that demonstrates real commitment and earns from the client the requisite respect which gives rise to the "partnership" relationship between outside counsel and corporate counsel. In today's highly competitive legal world, outside counsel must earn the nod from the client that he or she, the outside professional, is indeed worthy of being admitted to the partnering relationship.

Editor: Can the loyalty ever be overdone to the point where it interferes with the outside lawyer's ethical considerations?

Davis: Most definitely. Please note that I indicated that one of the attitudes was objectivity. Too often today in the quest to obtain new business and/or hold on to existing clients lawyers have forgotten that they are first professionals and second business people. Maximization of firm profits must never interfere with the outside counsel's ability to be objective about his advices to his "partner". The drive for business and to maximize firm profits requires vigilant objectivity to maintain the optimum professional balance. That balance is a critical ingredient in counselling and partnering. Indeed, an outside lawyer is not a true "partner" in discharging his or her obligations to his or her client when objectivity about a particular transaction or a litigation strategy is lost. Commitment to a client's causes is of prime importance; however, no lawyer worthy of being the client's "partner" should ever forget that the duty of loyalty to the firm's client must never be allowed to mask the fact that lawyers in a pluralistic society under the rules of professional conduct have competing duties to the courts, other clients and, in certain situations, non-client third parties. Anything less would be a disservice to all involved.

Editor: Does this reservation of independence carry over to your view of billing practices?

Davis: When I first broke in to the practice of law I learned from my mentor and present partner of almost 30 years stand-



Alan E. Davis

ing - Allen Ravin - the value of a retainer arrangement with our corporate clients that breeds comfort rather than discomfort. We did not realize then that we were indeed "partnering" with our clients; but in the modern sense we were. To us in the mid-1960's, we often offered our corporate clients an annual retainer paid in 12 equal monthly installments to cover all routine repetitive services such as, but not limited to, attention to the client's problems with suppliers, customers, routine employment contracts, '34 Act filings, space and equipment leases and the like. Excluded from the retainer were extraordinary corporate actions such as a merger, consolidation, acquisition, major financing or refinancing or public offering. To us, an even cash flow was a goal; however, the principal benefit was that the client did not feel that along with every conversation with an attorney a meter was running somewhere. We never adjusted retroactively but only prospectively when the occasion demanded. Thus, I dare say that over time our clients saved, on average, 20% to 25% against an hourly billing system. Our retainer clients still do. To me, on the business side, perhaps nothing better expresses the attitude of "partnering" than our retainer arrangements. Modifications of such arrangements also apply to the big case or the bet-the-company transaction.

From the client's perspective, the retainer arrangement gives immediate access to a lawyer for counselling and routine corporate affairs and ensures the presence of counsel at board of directors meetings, meetings of the various committees of the board and management committee planning sessions, if requested. The client obtains from outside counsel a level of attention and counselling that he or she might be reluctant to seek if billing were solely on an hourly basis. We have been told that this can be extraordinarily comforting to in-house counsel, CFO's and CEO's. A true "partnering" relationship between counsel with a common and clear understanding of the need for swift response permits corporate counsel in turn to be more effective by producing answers earlier, rather than later. The quality of the advice of outside counsel is often enhanced with a clear understanding of the client's day-to-day operations and the problems engendered by them. The right climate for such an understand-

ing often comes only when the client has relief from the ticking of the hated meter. Freed of the psychological pressure of the billable hour syndrome, communication between client and outside counsel can be much more effective. Thus, in the truest sense the outside counsel becomes a part of the management team, a partner, if you will. Outside counsel may then be viewed by corporate counsel as an asset, a resource, to be used as often as necessary but consistent with the budgetary demands placed upon corporate legal departments.

Editor: Are there any other manifestations of "partnering" at Greenbaum, Rowe, Smith, Ravin, Davis & Himmel?

Davis: Yes, staffing. We will often use in-house people to assist with or, in some cases, perform various tasks. These include due diligence in transactional work and production of documents in heavy litigation. Such arrangements dramatically reduce outside legal fees for what may often be viewed as routine work. Another example is in the development of strategy whether it is with respect to negotiations or in litigation. We firmly believe that outside counsel cannot and should not operate in a vacuum. A deal or a lawsuit must be pursued within the overall business plan and objectives of the business client. These decisions are driven not only by the merits but also by the client's budgetary concerns. Certainly, a decision whether to litigate or to use alternate dispute resolution techniques is a case in point. For example, the concept of alternative dispute resolution is a subject worthy of discussion with our clients when entering into transactions (in the absence of any dispute) and also after a dispute has occurred. A discussion of this nature can only be beneficial, for the well informed client and client's corporate counsel should ideally participate in concert to permit a cool and fair assessment of the optimum method or path for dispute resolution, that is, with the least disruption, and at the least cost in treasure and human resources.

Editor: Any final words?

Davis: "Partnering" is about reducing the costs of lawyering and making outside counsel's services more efficient and productive for the client; however, of equal importance, partnering is about relationships, attitudes and states of mind. There is no place in it for destructive, petty rivalries. Corporate and outside counsel must work together in all respects toward a common goal. One final word about objectivity of which we spoke earlier: each participant in the "partnership" must accept the unbending truth that the continuing independence of outside counsel is critical to the success of the partnering enterprise. Only then, can outside counsel's skill and experience be applied without reserve. Nonrecognition of the need for independence and objectivity can be a crippling handicap destroying in every respect the notion of partnering. There is too much good for the client and the legal system in "partnering" for corporate and outside counsel to let this happen.