PLAYING MONEYBALL IN THE IN-HOUSE LEGAL DEPARTMENT: USING MONEYBALL CONCEPTS TO PROVIDE IN-HOUSE COUNSELS WITH OBJECTIVITY AND INDEPENDENCE

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I. Introduction

The attorney in the in-house legal counsel position has a distinct role, one that is utterly different from any other that an attorney can fill. As former Chief Justice of the Delaware Supreme Court and renowned authority on the corporate counsel position, Norman Veasey, puts it in his book with Christine Di Guglielmo, “[t]he chief legal officer straddles the world of business and law, and thus occupies a status that is unique among both lawyers and business people.”

Having one foot in the realm of business and one foot in the realm of law creates unique demands for an individual who fills the position of in-house legal counsel. They must be both the “business partner” and the “guardian of the corporate integrity.” The chief legal officer, and thus the in-house legal department, are “‘business partner[s]’ with the CEO, CFO, and other members of the senior management ‘C suite’ in dealing with the company’s strategy, opportunity, and risk.”

They also act as “the ‘guardian[s] of the corporate integrity’ in the C-suite and in the boardroom by seeking to ensure that the corporation and its constituents adhere to the highest legal and ethical principles.” Due to the uniqueness of the in-house counsel role, it is imperative that the in-house attorney maintain her objectivity and independence. However, the in-house counsel position encompasses particular things that can undermine and undercut the necessary objectivity and independence.

This paper will explore some of those things that weaken the in-house counsel’s ability to be objective and independent, and examines how applying Moneyball concepts can help maintain that independence and objectivity.

II. The Importance of Objectivity and Independence

At the heart of any legal representation is objectivity. Many of the Model Rules of Professional Conduct promulgated by the American Bar Association attempt to prevent lawyers from being influenced by personal feelings, interpretations, or prejudices. As the casebook

2 Id.
3 Id.
4 Id.
5 See Model Rules of Prof’l Conduct R. 5.4(a) (2012) (prohibiting a lawyer or law firm from sharing legal fees with non-lawyers to prevent lawyers from being unduly influenced); see also Model Rules of Prof’l Conduct R. 1.8(i) (2012) (prohibiting lawyers from taking a proprietary interest in a cause of action or subject continued . . .
Professional Responsibility A Contemporary Approach states, “the retention of counsel carries with it an implied expectation that the attorney will advocate devotedly and diligently, and will spurn conduct inimical to the clients’ interests.” 6 Objectivity and the analogous concept of independence are the foundation of carrying out this expectation. Specifically, in order for in-house counsel to serve the corporation,

the lawyer needs something more than the business knowledge and imagination to see the risks and pitfalls and to point them out. He needs the objectivity that comes from not being himself the author of the transaction in hand, from not having a personal career interest in glossing over its risks and pitfalls in the hope of being remembered as an outstanding entrepreneur, and from not being himself obliged to weigh the risks he identifies and decides whether to accept them or reject them. 7

Alan Braverman, Senior Executive Vice President, General Counsel and Secretary of the Walt Disney Company, notes regarding independence and the general counsel position, “[t]he trick and one of the real challenges of being a general counsel is maintaining independence without the erosion of trust.” 8 Independence is fundamental to the in-house counsel being able to conclude what is in the best interest for the client. 9 Veasey and Di Guglielmo place it as one of the most important aspects in contemplating a general counsel’s relationship with senior management and the board. 10

Despite the fact the ABA Model Code is no longer the most


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8 VEASEY & DI GUGLIELMO, supra note 1, at 46.
9 Id. at 47. See also GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, 2 THE LAW OF LAWYERING § 17.7 (2d ed. Supp. 2004) (“independent professional judgment to determine what is truly in the client’s best interest—setting aside, if need be, the views of other highly placed agents”).
10 VEASEY & DI GUGLIELMO, supra note 1, at 47.
pertinent authority from the ABA, it still possesses valuable contemplations on independence and in-house counsel. Ethical Consideration 5-18 of the Code, in providing direction for lawyers representing an organization, reads in part, “[i]n advising the entity, a lawyer should keep paramount its interest and his professional judgment should not be influenced by the personal desires of any person or organization.” Fulfilling the “business partner” and “guardian of the corporate integrity” aspects of the chief legal officer position, as head of the in-house legal department, requires a sense of independence. “The CLO [chief legal officer] must continually wrestle with her need to support management and the board as persuasive counselor on the one hand and her need to exercise courage and independence in providing unvarnished advice and to ‘apply the brakes’ when needed.” Thus, any decision as to which need an in-house counsel should address must derive from a critical thinking process that is unbiased and can express an impartial view.

To ascertain the importance of objectivity and independence one does not have to look any farther than the Enron scandal. According to William C. Powers’ “Report of Investigation by the Special Investigative Committee of the Board of Directors of Enron Corp.,” important elements to the scandal from those providing corporate counsel were the “absence of forceful and effective oversight [of the company’s disclosures] and [of] objective and critical advice…” The report further criticizes corporate counsel claiming they “should have brought a stronger, more objective and more critical voice to the disclosure process.” Thus, as the Power’s Report on Enron demonstrates, objectivity and independence are essential attributes that must be brought by the in-house corporate counsel role to combat any potential for the corporation to engage in illegal or unethical conduct.

12 Id.
13 Veasey & Di Guglielmo, supra note 1, at 47-48.
14 Id. at 48.
15 Stephen Bainbridge, Corporate Governance After the Financial Crisis 180-81 (2012).
16 Id. at 181.
III. DETRACTIONS FROM THE OBJECTIVITY AND INDEPENDENCE OF IN-HOUSE CORPORATE COUNSELS

A. Relationship with Management

Although there is great significance placed on the objectivity and independence of the corporate counsel position, the position entails inherent detractors from an in-house counsel’s ability to maintain objectivity and independence. As Dick Thornburgh, former U.S. attorney-general, former governor of Pennsylvania, and the Examiner in the WorldCom bankruptcy proceedings points out,

[c]omplicated issues of loyalty can arise in a corporate setting. Corporate lawyers may develop [a] close working relationship with the chief executive officer. In many instances, they become the de facto ‘counselor’ to the CEO and typically owe their job security to the CEO. However, they must keep in mind constantly that their client is the company and not necessarily the CEO.  

At times, it can be difficult for the in-house counsel to maintain the distinction that as the principal legal advisor to the company, the company is the in-house counsel’s only client. Those in the C-level management positions are only “a constituent of [the in-house counsel’s] corporate client, as are other senior officers and directors.”

This situation where the in-house counsel is responsible to the corporation as the client, but works with management as the embodiment of the corporation, has been identified by many commentators, practitioners, and scholars as a potentially compromising setting for an in-house counsel. Some have explained that “close working relationships create a sense of identification or association between the general counsel and other senior managers.” Moreover, this sense of identification can be tied to a development of “loyalty to superiors” that can compromise [the in-house counsel’s]

19 Id.
20 VEASEY & DI GUGLIELMO, supra note 1, at 60 (citing Susanna M. Kim, Dual Identities and Dueling Obligations: Preserving Independence in Corporate Representation, 68 TENN. L. REV. 179, 252 (2001)).
ability to view management plans with an independent, critical eye.”21 Duke University Professor of Law Deborah DeMott labels this sense of identification or association with senior managers and “loyalty to superiors” as the socialization of the in-house corporate counsel position.22 She expounds the concern with the socialization of the position, by stating “to the extent general counsel is socialized as a member of the senior management team, general counsel may be reluctant to jeopardize ongoing membership in the team and inclusion in its informational loops...”23

The story of Franklin C. Brown, former corporate counsel for Rite Aid, exemplifies the concerns surrounding the compromising of the objectivity and independence of the in-house counsel as a result of the relationship with management. Throughout his tenure as a member of the Rite Aid legal department, Brown developed “an overwhelming sense of loyalty to the company.”24 This overwhelming sense of loyalty to the company manifested itself when the founder of Rite Aid’s son became CEO.25 The relationship between Brown and the founder of Rite Aid’s son now CEO was described as “since [the son] was a kid...the son ‘got his neck in incredible situations’ from which Mr. Brown rescued him.”26 As a result of disconcerting low earnings and a restatement of three years’ pretax earnings in a record setting amount (at the time), Rite Aid’s audit committee conducted an investigation.27 The investigation uncovered facts that hinted the CEO and CFO had engaged in “serious breaches of their fiduciary duties.”28 Specifically regarding Brown, his conduct surrounding the audit committee’s investigation and a separate but related SEC investigation caused him to be indicted.29

Moreover, a FBI examination into the Rite Aid situation unfurled that Brown “agreed to backdate letters and to take other measures in an attempt to conceal fraudulent accounting practices.” 30 Additionally, Brown gave his secretary $25,000 so she would alter

21 Id.
22 See id.
25 Id. at 976.
26 Id.
27 Id.
28 Id.
29 Id.
30 Id.
documents. In concluding Franklin Brown’s story, Professor McDermott does an excellent job of placing Brown’s situation and decisions into context. She writes, “[i]t would be a mistake to dismiss Mr. Brown’s story as simply a vignette about a sadly misguided individual. Solidarity between a general counsel and other members of senior management can compromise counsel’s service as a legal adviser and as the company’s agent in its dealings with third parties.”

B. The Single Client

Another factor that can have a limiting effect on the objectivity and independence of an in-house counsel is that she only has one client. Those individuals composing the in-house counsel department are “the principal legal advisor[s] to the company, which is—or should be—[their] only client.” A significant difference between in-house counsel positions versus outside counsel positions is the inability for the in-house counsel “to spread employment risk over multiple clients.” This single client situation and the employment risk create a strong concern for the in-house counsel role. As it has been noted, “a general counsel’s dependence on a single client may call into question counsel’s capacity to bring an appropriate degree of professional detachment to bear.”

The single client scenario and the associated employment risk creates the motivation for an in-house counsel member to “go along to get along” with management. The inability for the in-house counsel to detach herself and maintain a sense of independence and objectivity is the essence of the “go along to get along” problem. Norman Veasey and Christine Di Guglielmo describe the temptation to “go along to get along” within the context of the exacerbated employment risk due to having one client:

[i]n-house counsel’s inability, as distinct from the ability of most outside counsel, to spread employment risk over multiple clients may result in a temptation to ‘go along to get along’—perhaps by rationalizing problematic business decisions—the courses of action

31 Id.
32 Id. at 976-77.
33 Veasey & Di Guglielmo, supra note 18, at 58.
34 VEASEY & DI GUGLIELMO, supra note 1, at 57 (citing GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, 2 THE LAW OF LAWYERING § 17.7 (2d ed. Supp. 2004)).
35 DeMott, supra note 23, at 956.
36 See VEASEY & DI GUGLIELMO, supra note 1, at 56-57 (citing DeMott, supra note 23, at 956).
sought by the managers who hold the power to hire, promote, compensate, and fire them.\textsuperscript{37}

A significant compromising factor to the independence and objectiveness of the in-house counsel as a result of “going along to get along” with management is the rationalizing of problematic business decisions mentioned in the above quote. Prolific scholar Professor Stephen Bainbridge from the UCLA School of Law elaborates on this compromising factor by quoting former Delaware Chancellor Allen. Bainbridge identifies former Chancellor Allen’s statement in \textit{City Capital Assoc. Ltd P’ship v. Interco Inc.}, that “human nature may incline even one acting in subjective good faith to rationalize as right that which is merely personally beneficial.”\textsuperscript{38} Bainbridge would take former Chancellor Allen’s quote further by noting,

[i]t typically is personally beneficial for lawyers to refrain from antagonizing the corporate managers who hire and fire them. The claim is not that lawyers are pervasively co-opted or immoral. The claim is only that lawyers have both economic incentives and cognitive biases that systematically incline them to stay on the good side of the corporation’s managers.\textsuperscript{39}

Therefore, the desire to stay on the good side of the corporation’s managers and abstain from antagonizing these managers creates an inclination, despite the attorney’s overarching legal obligations, to “intentionally or subconsciously ‘overlook’ marginal conduct.”\textsuperscript{40} Thus, in-house counsels are tempted to undertake the disposition of “going along to get along” by rationalizing and overlooking problematic and marginal behavior in order to protect their employment interest.

One needs to only consider the savings and loan crisis during the 1980s and the more recent pitfalls of Enron to discern how in-house counsels can fall into the “go along to get along” trap and the harm this attitude creates. As Judge Stanley Sporkin’s famous question in the midst of the savings and loan crisis asks,

[w]here were these professionals, a number of whom are now asserting their rights under the Fifth Amendment, when these clearly improper transactions

\begin{footnotes}
\item[37] Id. at 57 (citing \textsc{Geoffrey C. Hazard, Jr. & W. William Hodes, 2 The Law of Lawyerng \textsection 17.7 (2d ed. Supp. 2004))).
\item[38] Bainbridge, supra note 15, at 196.
\item[39] Id.
\item[40] Id. at 188.
\end{footnotes}
were being consummated? Why didn’t any of them speak up or disassociate themselves from the transactions? . . . What is difficult to understand is that with all the professional talent involved (both accounting and legal), why at least one professional would not have blown the whistle to stop the overreaching that took place in this case.41

This memorable quote was again poignant as the Enron fraud unfolded. In looking at the Enron scandal and beyond Bainbridge writes, “[t]here is little doubt that lawyers played an important role in the scandals. Sometimes their negligence allowed management misconduct to go undetected. Sometimes lawyers even acted as facilitators and enablers of management impropriety.”42

Consequently, the fundamental importance that is associated with objectivity and independence to the function of the in-house counsel position and the powerful influences that can compromise those traits creates an essential need to give the in-house counsel lawyer courage to fight against the detractions to those traits. Thus, there is a vital desire to find the tools to give the in-house counsel lawyer a better ability “to exert independent judgment when providing legal advice to the corporation or when examining and advising corporate constituents on compliance practices or risk-taking decisions.”43 It is as a mechanism to fortify the foundation of the in-house counsel’s ability to administer the objectivity and independence in her role that the concepts of Moneyball can be incorporated into an in-house corporate legal department.

**IV. WHAT IS MONEYBALL?**

At a cursory glance, Moneyball: The Art of Winning an Unfair Game by Michael Lewis is a book about “a small group of undervalued professional baseball players and executives, many of whom had been rejected as unfit for the big leagues, who turned themselves into one of the most successful franchises in Major League Baseball.”44 It is a story exploring how in the context of the belief that the game of baseball “was ceasing to be an athletic competition and becoming a financial one,” and that “only rich teams could afford the

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41 *Id.* at 180 (citing Lincoln Sav. & Loan Ass’n v. Wall, 743 F.Supp. 901, 920 (D.D.C. 1990)).
42 *Id.* at 180.
43 VEASEY & DI GUGLIELMO, supra note 1, at 57.
best players,” while “a poor team could afford only the maimed and the inept, and was almost certain to fail,” the Oakland Athletics, with one of the lowest or next to lowest payrolls in baseball, had been one of the most winning teams in the sport.\textsuperscript{45}

However, \textit{Moneyball: The Art of Winning an Unfair Game} goes beyond baseball. As Ryan McConnell, partner at Baker & McKenzie LLP in Houston, Daniel Trujillo, current head of Walmart’s international legal compliance\textsuperscript{46} and former deputy general counsel and director of compliance at Schlumberger, Ltd., and law student Katelyn Richardson contend, \textit{Moneyball} “more broadly illustrates how empirical data and statistics have changed the way we analyze and solve problems.”\textsuperscript{47} Author of the annual \textit{Baseball Abstract} and driving force behind rethinking the use and calculation of baseball statistics Bill James called it the ability for the statistics to acquire the power of language.\textsuperscript{48} In discussing his complaint with the concept of the baseball fielding statistic of an error, James wrote,

fielding statistics made sense only as numbers, not as language . . . When the numbers acquire the significance of language, . . . they acquire the power to do all of the things which language can do: to become fiction and drama and poetry . . . And it is not just baseball that these numbers, through a fractured mirror describe. It is character. It is psychology, it is history, it is power, it is grace, glory, consistency, sacrifice, courage, it is success and failure, it is frustration and bad luck, it is ambition, it is overreaching, it is discipline. And it is victory and defeat . . .\textsuperscript{49}

In another telling passage from James in defining \textit{Moneyball}, James held these thoughts regarding offensive baseball statistics,

I am a mechanic with numbers, . . . tinkering with the records of baseball games to see how the machinery of the baseball offense works. I do not start with the numbers any more than a mechanic starts with a

\textsuperscript{45} \textit{Id.} at xi-xii.
\textsuperscript{48} See \textit{LEWIS}, supra note 44, at 64.
\textsuperscript{49} \textit{Id.} at 67.
monkey wrench. I start with the game, with the things that I see there and the things that people say there. And I ask: Is it true? Can you validate it? Can you measure it? How does it fit with the rest of the machinery? And for those answers I go to the record books... What is remarkable to me is that I have so little company. Baseball keeps copious records, and people talk about them and argue about them and think about them a great deal. Why doesn’t anybody use them? Why doesn’t anybody say, in the face of this contention or that one, ‘Prove it’?50

Thus, as the above quotes from James display, the Moneyball concepts go beyond simply statistics and numbers and what one is trying to calculate. As Michael Lewis analyzed, “[i]ntelligence about baseball had become equated in the public mind with the ability to recite arcane baseball stats. What James’ wider audience had failed to understand was that the statistics were beside the point. The point was understanding; the point was to make life on earth just a bit more intelligible...”51 The Moneyball ideas are to find statistical measures that truly define the heart of the matter at issue. In using James’ analogy of numbers as language, the Moneyball concepts are finding the numbers and statistics that accurately portray the real story. It is the process of finding the numbers and statistics that convey a particular meaning. As Lewis asserts this in the baseball context, it is the “desire to... make baseball more efficient—to measure and value precisely the events that occur on a baseball field, to give the numbers new powers of language.”52

Though, the Moneyball concepts do not end with just measuring and valuing precisely the events that occur in a particular field, be it sports or otherwise. Once one has found the poignant statistical measures and numbers, the Moneyball approach entails deriving decision making from what these statistical measures and numbers convey. Put another way, one needs to use the numbers imbued with the powers of language to dictate how the story should next unfold. For example, in 2002 the Oakland Athletics lost one of their premier players, leadoff hitter and center fielder Johnny Damon, to free agency.53 In ascertaining how to fill the hole left by the departure of Damon, Oakland assistant general manager Paul DePodesta54 used the

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50 Id. at 75.
51 Id. at 95.
52 Id. at 72.
53 See id. at 123.
54 See Scott A. Sherman, Rethinking America's Pastime: The Paul DePodesta continued...
idea discovered by Bill James that there was a stable relationship between season run totals and season win totals.\textsuperscript{55} Therefore, he had calculated how many runs the Athletics would need to win enough games to likely make the playoffs.\textsuperscript{56} By focusing on the statistic of a player’s ability to get on base, “an attribute that was most critical to the success of a baseball team” and significantly undervalued “compared to the ability to hit with power,” the Athletics’ management was more accurately able to value what Damon brought to the Athletics’ offense the prior year.\textsuperscript{57} Especially when comparing Damon’s ability to get on base to the league average, from an offensive perspective he became easy to replace.\textsuperscript{58} Moreover, by contemplating historical statistical data in a way that could derive a value, DePodesta “could take every ball hit in the area broadly defined as center field [Damon’s defensive position] and determine its ‘expected run value.’”\textsuperscript{59} Consequently, by way of analyzing the multitude of balls hit by opponents of the Athletics “in the vicinity typically covered by the center fielder” and “totaling up the outcomes when Johnny Damon was in the field, and comparing them to the average, Paul [DePodesta] was able to see how many runs Damon had saved the team.”\textsuperscript{60} As a result, the statistical measures used by the Oakland management gave them a more accurate way to determine how to replace Johnny Damon.

V. \textit{Moneyball Concepts and the In-House Counsel Position}

Despite the fact an in-house counsel is highly unlikely to ever have to contemplate how many runs need to be scored to make the playoffs or an individual’s ability to get on base; \textit{Moneyball} concepts can provide a strong benefit for one filling the in-house counsel role. As in-house counsel departments are better able to measure and value precisely events and behaviors that lead to ramifications under their bailiwick, they can more effectively fulfill the in-house counsel capacity in the context of the operation of a corporation. This leads to the in-house legal department being a greater asset to the corporation. McConnell, Trujillo, and Richardson call attention to how many in-


\textsuperscript{55} \textsc{Lewis}, supra note 44, at 124.
\textsuperscript{56} \textit{Id.}
\textsuperscript{57} \textit{Id.} at 129.
\textsuperscript{58} \textit{Id.}
\textsuperscript{59} \textit{Id.} at 135.
\textsuperscript{60} \textit{Id.}
house counsel departments are incorporating *Moneyball* concepts as an aid to completing the responsibilities of the position.\(^{61}\) *Moneyball* concepts are being conducted “to effectively manage allegation programs, document production, due diligence, compliance audits, and training.”\(^{62}\) Consider the software programs of Ethics Point and the Ethisphere company. Ethics Point enables in-house lawyers to monitor allegations from their inception to resolution.\(^{63}\) As a result of the software, “on an annual basis, empirical compliance allegation data can tell in-house counsel where to allocate additional compliance resources, such as training and audits, to address risk.”\(^{64}\) The Ethisphere company permits in-house counsel attorneys access to compliance data. This database “provides lawyers with a way to empirically analyze compliance problems.”\(^{65}\) Fundamentally, the execution of *Moneyball* concepts within in-house legal departments “is changing the way companies address risk.”\(^{66}\)

Beyond just changing the way companies address risk, the incorporation of *Moneyball* concepts can be a boon to the objectivity and independence of the in-house counsel. They can provide a fortifying device to help encapsulate the necessary objectivity and independence the in-house counsel function demands. As a passage in *Moneyball* notes, in comparing the financial field to the business of baseball,

> [p]eople in both fields operate with beliefs and biases. To the extent you can eliminate both and replace them with data, you gain a clear advantage. Many people think they are smarter than others in the stock market and that the market itself has no intrinsic intelligence—as if it’s inert. Many people think they are smarter than others in baseball and that the game on the field is simply what they think it is through their set of images/beliefs. Actual data from the markets means more than individual perception/belief. The same is true in baseball.\(^{67}\)

Similar statements could also be made about the in-house counsel field. As the above section detailing factors that can diminish the

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\(^{61}\) See McConnell et al., *supra* note 47.  
\(^{62}\) Id.  
\(^{63}\) Id.  
\(^{64}\) Id.  
\(^{65}\) Id.  
\(^{66}\) Id.  
\(^{67}\) *Lewis*, *supra* note 44, at 90-91.  
\(^{68}\) See *supra* notes 17-43 and accompanying text.
objectivity and independence of one administering the in-house counsel role exhibits. Individuals in this occupational field also operate with biases. Because of the susceptibility to biases, actual data on matters such as compliance can be of great value for the in-house counsel in fulfilling her function. The use of Moneyball concepts and the associated application of data, numbers, and statistics give objectivity to the in-house counsel position.

Objectivity is representing things as they really are. It “means fairness and impartiality. Someone who ‘isn’t objective’ has allowed prejudice or self-interest to distort a judgment.” As R.M. Newell compares it in his book Objectivity, Empiricism, and Truth, “[o]bjective judgments are contrasted with prejudiced, biased or dogmatic judgments and objectivity is associated with impartiality, detachment, disinterestedness and a willingness to submit to standards of evidence.” He would further elaborate objectivity as holding an impartial regard for reason and evidence to the highest value. As a result of the importance placed on an impartial regard for reason and evidence, objectivity “is to be constrained” by reason and evidence.

The Moneyball concepts provide the standards of evidence. They are the mechanism through which reason and evidence is able to constrain the operation of the in-house counsel function.

The Moneyball concepts are able to deliver the standards of evidence and an avenue for reason and evidence to create parameters for the in-house counsel due to the quantification enveloped by the concepts. As was examined previously, essential to the Moneyball concepts is quantification. Inherent to finding and using statistical measures that truly define the heart of the matter at issue and finding the numbers and statistics that convey a particular meaning is quantification. The quantification provides objectivity because it is “a neutral, objective language, a basis for minimizing arbitrariness, and hence for overcoming suspicion and winning allies.”

Moreover, quantification entails measurement and “measurement means nothing


70 Porter, supra note 69, at 4.


72 Id. at 33.

73 Id.

74 See supra notes 44-60 and accompanying text.

if not precision and objectivity.”76

Additionally, as a component of mathematics, quantification and consequently the *Moneyball* concepts, are “highly structured and rule-bound [...] and they exact] a severe discipline from [their] users...”77 Theodore M. Porter, in one of his essays, discusses quantitative objectivity and the functioning of elites and expertise derived from a dearth of experience and notes, “[i]f others in positions of power [(the elites)] share their outlook and experiences, there is little need to make their reasoning explicit, and hence little reason to have recourse to the rigid forms of quantified decision procedures.”78 These structures, rules, and discipline that the *Moneyball* concepts dispense to a decision flowing through the application of them create a bulwark against bias seeping into and dominating the operation of in-house counsels. The *Moneyball* concepts and associated quantification facilitates objectivity and independence by reducing choices to rules and “grounding those rules in the impersonal laws of nature and of number.”79 In fact, the *Moneyball* process of unlocking statistics’ ability to have the power of language80 and using those statistics to drive the choices pursued provides the principles rooted in the impersonal laws of nature and number.

With the principles of the impersonal laws of nature and number, the *Moneyball* concepts lead to decisions that are no longer guided “by impulse or subjective considerations, but would be based on a rigorous and calculable . . . rationale.”81 Thus, the in-house counsel that conducts her role while implementing *Moneyball* concepts fortifies herself from impulsive or subjective considerations that allow for biases related to her relationship with management and having a single client. Through the rigorous and calculable rationale, the *Moneyball* concepts can provide independence and objectivity to a decision and can bestow a safeguard against bias dictating and blinding an in-house counsel. It is because the quantification, measurement, numbers, and statistics at the core of the *Moneyball* concepts operate beyond the inherent detractors of independence and objectivity in the in-house counsel position that they are able to offer these attributes.

Moreover, the objectivity the *Moneyball* concepts can bestow also

76 PORTER, supra note 69, at 23.
77 Id. at ix.
78 Porter, supra note 75, at 206.
79 Id. at 227.
80 See LEWIS, supra note 44, at 64 (quoting BILL JAMES, THE BILL JAMES BASEBALL ABSTRACT 1985 (1985)).
81 Peter Miller, Accounting and Objectivity: The Invention of Calculating Selves and Calculable Spaces, in RETHINKING OBJECTIVITY 239, 251 (Allan Megill ed., 1994).
creates a resource to prevent an in-house lawyer from falling into the “going along to get along” problem. It can provide a significant and influential tool that an in-house counsel can employ in convincing management to deter from activities that could ultimately be harmful to the corporation. This is echoed by Porter who writes, “[t]he crucial insight here is to see objectivity as a way of forming ties across wide distances. It epitomizes the possibility of effective communication between parties whose goals, interests, and beliefs may differ fundamentally.”

Additionally, Porter notes how objectivity in instances can be a substitute for trust. Therefore, with the objectivity delivered by the Moneyball concepts being an instrument for effective communication between an in-house lawyer and the management, and instilling the element of trust, the in-house counsel has the support necessary to stand-up to management when required.

In closing, the ideas of William Whewell, one of the most important and influential figures in nineteenth-century Britain, provide an acute view of why Moneyball concepts can deliver independence and objectivity to an in-house counsel department. Whewell looked to statistics as an alternative or at least an indispensable supplement to abstract theory in economics. He looked to statistics as an alternative or supplement to provide more concrete realities because “[v]erbal reasoning . . . is too slippery.” “It does not require that the premises be made clear, and permits auxiliary hypotheses to slip in unnoticed. It provides no clear checks against errors of reasoning.” Whewell believed “mathematical economics” could “overcome these defects.” Similarly, incorporating Moneyball concepts into the execution of the in-house counsel duties can overcome the defects of bias resulting from her relationship with management or having a single client by providing a check against errors of reasoning, making premises clear, and closing out auxiliary hypotheses. As a result of providing the remedy to these defects, the Moneyball concepts can provide objectivity and independence to the in-house counsel function.

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82 Porter, supra note 75, at 226.
83 See id.
85 PORTER, supra note 69, at 52.
86 Id.
87 Id.
VI. CONCLUSION

As the “guardian of the corporate integrity” and “business partner,” the in-house corporate counsel occupies a pivotal point in the corporation. Vital to successfully fulfilling the demands of the in-house counsel position is maintaining objectivity and independence. Yet, there are fundamental aspects of the in-house counsel role that can compromise the necessary objectivity and independence through an insertion of bias. The relationship with management and having only a single client are elements of the in-house counsel position that can inhibit an in-house counsel operating in an objective and independent manner.

The priority placed on an in-house attorney asserting objectivity and independence create an essential need to incorporate features in executing her function that will preserve these traits and guard against bias. It is from this essential need that the incorporation of *Moneyball* concepts in the operation of an in-house legal department can provide significant value. The *Moneyball* concepts’ process of an in-house counsel department being able to measure and value precisely events and behaviors that lead to ramifications under their bailiwick instills an objectivity and independence into the department. Their use of measurements, statistics, and quantification that give the power of language to the numbers to drive decisions establishes a barrier against the bias intrinsic to the in-house position marring the position’s requisite objectivity and independence. Therefore, the *Moneyball* concepts are not just for determining how to best replace a leadoff hitter and center fielder; they can also be applied to prevent the question, “where were all the lawyers”? from being asked.

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88 See BAINBRIDGE, supra note 15, at 180.