DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Terrance Carlson

General Counsel of Medtronic

THE SPEAKERS

Terrance Carlson
Senior Vice President, General Counsel & Secretary, Medtronic, Inc.

Martin Lueck
Chairman of the Executive Board, Robins, Kaplan, Miller & Ciresi L.L.P.

Mark Mathie
Principal, McKool Smith, P.C.

John Stout
Partner, Fredrikson & Byron, P.A.

TO THE READER:

General Counsel are more important than ever. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor's personal accomplishments and of his company's leadership, we are honoring Terrance Carlson for his career, including as General Counsel of Medtronic. Mr. Carlson is undertaking a new position with Medtronic to address some of the pressing legislative and policy issues facing the medical device industry. His address will focus on major public policy issues facing the health care and medical device industry. The panelists' additional topics include intellectual property litigation; corporate issues and M&A; and the opportunities and challenges facing the partnership between General Counsel and their outside law firms.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors including General Counsel.

Jack Friedman
Directors Roundtable
Chairman & Moderator

Terrance L Carlson

Senior Vice President,
General Counsel & Secretary,
Medtronic, Inc.

Terrance (Terry) Carlson served as Senior Vice President, General Counsel and Corporate Secretary of Medtronic, Inc., the world's leading medical technology company, from 2004 until May 2009. In that role, he led Medtronic's 100-attorney Legal function, as well as the Government Affairs organization. He is currently serving as Legislative and Government Affairs Counsel, having announced early this year that he will retire from Medtronic in November 2009.

Carlson joined Medtronic from PerkinElmer, Inc., where he served as Senior Vice President –Business Development, General Counsel and Secretary from 1999 to 2004. In this role, Carlson was responsible for the legal, business development, strategic planning and government affairs activities for PerkinElmer, an international provider of life and health sciences solutions, optoelectronics and other technology products and services. During a three-year period, Carlson led more than 30 acquisitions and divestitures that transformed PerkinElmer into a leading provider of life and analytical sciences tools, including FDA-regulated diagnostic devices and other high technology applications.

Prior to joining PerkinElmer, Carlson was Deputy General Counsel of AlliedSignal (now Honeywell International) and General Counsel of AlliedSignal Aerospace. From 1978 until 1994, he was an associate and partner with the international law firm of Gibson, Dunn & Crutcher, where he practiced in the firm's London and Los Angeles offices, and established the firm's office in Hong Kong. In private practice, he specialized in a broad range of cross-border business, investment and financing transactions, and worked on matters in over 70 countries.

Carlson received a degree in accounting and finance from the University of Minnesota and his JD from The University of Michigan Law School, where he served as Managing Director of the *Michigan Law Review*. He also completed the general management course at the Harvard Business School. He is active in a number of community service organizations, including the Minnesota Orchestra, Twin Cities Public Television, and the Page Education Foundation.

JACK FRIEDMAN: Welcome. I'm Jack Friedman, Chairman of the Directors Roundtable. We are a civic group whose mission is to organize the finest programming on a national and global basis for Boards of Directors and their advisors.

I'm very happy to have the event here in Minneapolis. There has been a tradition of leadership in and coming out of Minnesota that has affected the country in different ways. I think that having the event here is not only an honor to Terry Carlson and to Medtronic, but also for the business and legal community here in Minnesota.

The format this morning will be simple. The speakers will make opening remarks which will be followed by a roundtable discussion. The transcript will be made available to 150,000 leaders nationally and globally. The honor truly has a broad significance.

Our Guest of Honor is Terrance "Terry" Carlson, who has served in different positions in his career, most recently as the General Counsel of Medtronic. He has additional responsibilities vis-à-vis Washington, which he will be speaking about.

The Distinguished Speakers are Mark Mathie, Principal of McKool Smith; Martin Lueck, Chairman of the Executive Board of Robins, Kaplan, Miller & Ciresi; and John Stout, Partner of Fredrikson & Byron. Without further ado, I would like to introduce our Guest of Honor, Terrance Carlson of Medtronic. Thank you.

TERRANCE CARLSON: Thanks very much, Jack. I have to say, I'm grateful; I'm a little puzzled by this honor, and I thought about it, and I guess the story is if you live long enough and stay out of major trouble, someone will notice, so I appreciate that.

I do want to thank the Directors Roundtable for this. The Roundtable does a lot of good at hosting events and spotting issues for Directors and senior managers all over the country, several hundred events in the last 15 years or so. It is nice to be recognized by an organization that does so much good.

I'm surprised by the size of the turnout this morning, and I think that's a tribute to the free breakfast, but I thank you all for coming! I appreciate the involvement of the three law firms which are represented on the panel here and who are hosting the event today, and I hope we'll get into some spirited discussions from these experts.

I see several of my colleagues from Medtronic in the room today. Thank you all for coming. It has been my privilege in the last five years to serve as your General Counsel, and in the next six months or so, I'll spend most of my time in Washington trying to preserve that Supreme Court win we had about a year and a half ago. It will be an uphill fight, but that doctrine of preemption, which is

something we can talk about later as time permits, will be sort of my main job over the next several months on behalf of Medtronic.

Last, and most importantly, I want to acknowledge and thank the one person who has not only tolerated me, but stood with me on this journey over the last twenty-some years, and given me the honors and titles I value most – those of a husband and father – my wife, Jeannette Leehr. Jeannette, thank you.

It has been quite a journey from my childhood on the Iron Range to the main "U" here, you know, into Michigan, to California twice in my career, London, Hong Kong, Saudi Arabia, New Jersey, Boston, and finally back to Minnesota five years ago, after 30 years on the run.

Having been in so many places and experienced so many things, I was hard-pressed to squeeze my remarks into the three hours allotted to me today, but I'll do my best.

As I was thinking about what to say over this past weekend, I discovered the Minnesotan within me. My mind was wandering to this coming weekend: Minnesota's own magical coincidence of important events: the opening of fishing season and Mother's Day. How sweet of the state to acknowledge our mothers this way, giving a million people a built-in activity so they can take Mom fishing, prepare a shore lunch or maybe a shore dinner, and not just bore them over brunch as they have to do in so many of the other unenlightened parts of the country.

Also, over the weekend, Jeannette and our son, Steve, sensing that my mind was at the lake, suggested a great topic for today: the retired General Counsel's favorite early spring walleye tactics. Actually, I don't know enough about that, many of you will be happy to know, but I'm hoping that in the future, my time in the boat will catch up to my walleye daydreaming time, and maybe in a couple of years, I'll come back and talk about that.

Today, I want to make a few remarks about the role of the General Counsel and corporate legal departments, the partnership, as we would all like to call it, between corporate legal departments and outside counsel, and if time permits I will touch on, and will talk a little bit about these health care issues, including primarily preemption, which is important to our industry, and I'm afraid has been distorted in the press. So we may have a chance to talk about some of that.

I have to make clear that what I am saying today, my remarks are my own; my own opinions; they're not to be attributed to Medtronic or anyone else. So if I say something stupid or ridiculous, just blame me. It is not on behalf of anyone.

So let's talk about the role of the General Counsel and the corporate legal function more generally; how it is changing in the current environment, and changes I think corporate *and* outside counsel can make in order to be more effective.

Traditionally, I suppose that General Counsel has been viewed as a gatekeeper of legal matters, advising and advocating when legal issues arise, and that's more of a reactive and often defensive role. When something comes up, the General Counsel and the legal department deal with it, kind of like swatting flies or playing whack-a-mole.

It is still an important job, this gatekeeping, especially the part about keeping the corporation out of difficulty. I emphasize that we can't, as corporate lawyers, cannot lose sight of the fact of who our client is. Our client is the corporation. It is not the CEO; it is not our line boss; it is nobody else; it is not our co-officers. Our client is the company.

If we look at some of the recent corporate scandals in the past decade, sometimes there's an element of the General Counsel losing sight of who his or her client is, and sometimes even getting involved in schemes that have hurt the ultimate client, the corporation.

The corporate lawyer's duty to the corporation can obviously create tension between the lawyer and other corporate officers, who might see the lawyer as someone who works for or reports to him or her, but in fact the duty is to the company, and everybody has to keep that in mind.

You might also think of the General Counsel beyond gatekeeper as a counselor; somebody who provides counsel and advice in specific, often difficult situations; to frame the issues and risks so managers can make properly informed business decisions. Beyond counseling, some have written and talked about the role of General Counsel as enabler, as in, "Don't just set boundaries; don't just tell us what we *can't* do – tell us what we *can* do."

All these roles are important, and the valued General Counsel will always try to find solutions to business and legal challenges that will enable company action while staying on the right side of the law.

In our dynamic world, though, the demands upon a General Counsel go beyond all these roles of gatekeeper, advisor, counselor, enabler, etc. The General Counsel today has to take a more active role to spot issues and opportunities, and avoid corporate difficulty, not just react when that difficulty presents itself.

The Honorable Norm Veasey, former Chief Justice of the Delaware Supreme Court and now practicing law in New York, identified the challenges of the modern General Counsel in a recent interview with the *Metropolitan Corporate Counsel* publication, and summed up the role of the GC very thoughtfully as follows: "There may be attention in the role of the General Counsel, whether the General Counsel is an enabler or a gatekeeper. I think of the General Counsel as the persuasive counselor, which is something different. The persuasive counselor affirmatively tries to be proactive and courageous in persuading the Board of Directors and the CEO to follow the law, go beyond in their compliance with the law, and do the right thing from a moral, ethical and proper corporate governance perspective. Courage is the key. Sometimes it is very difficult for the General Counsel to carry out this role, when there are so many disparate tensions, particularly in today's tough environment."

I think that just a month or so ago, this summed up exactly some of the tension we corporate lawyers feel. I think Veasey sums up the challenge very nicely – to be creative, to partner, to enable, to advise – all in the interest of moving the company forward in its business objectives, and yet from time to time, showing the courage to stand before the pressures of meeting the company's quarterly or annual performance goals to say, "Wait. There's something more important here to my client, the corporation. I want the opportunity to persuade you to try a different approach for the good of the company."

> "The General Counsel today has to take a more active role to spot issues and opportunities, and avoid corporate difficulty, not just react when that difficulty presents itself." – *Terrance Carlson*

Those of you who aspire to be a General Counsel, and those of you who work with General Counsel as advisors, bosses, or co-workers, should all take note of the unique responsibility that the GC has in these often difficult situations, to be a voice of what I will call, building upon Veasey's term, *creative* courageous persuasion, when eyes of Wall Street analysts are focused laser-like on quarterly results, for example.

I add "creative" to Veasey's "courageous persuasion" because I believe it is incumbent upon us, as lawyers in difficult situations, to not simply advocate for "no," but to offer a better solution.

As a General Counsel, you may have to take a deep breath and do this from time to time. As an advisor to a General Counsel, you'll need to guide that General Counsel through all the ramifications in these situations; and as a CEO or other corporate officer, you need to trust and respect that the General Counsel who says "wait" is doing so solely out of his or her duty to the corporation, to the client, and not for any personal gain or attention, or anything else. If everybody understands that role and the source of the General Counsel saying "wait," the General Counsel will be able to function best, and with open-mindedness and respect all around the table, the group will generally come up with the right answer.

Now, talking about these nice concepts of counselor, enabler, advisor, etc., is easy. I'm sure everyone agrees that the need for trust and courage is paramount. But beyond the concepts, the General Counsel has to get the job done. So how does the General Counsel manage in this changing environment, in which we are expected to be visionary, cautionary, enabling, creative, and yet make sure we're doing the right things.

The idea of building trust, becoming the trusted advisor who can be respected as the persuasive counselor who *only* has the best interests of the company in mind, is a chicken and egg situation. One gains the confidence to be able to advise persuasively, by advising persuasively and creatively. So what would I advise General Counsel and their bosses to do? Above all, communicate.

I have said this many times, and looking around the room I know the Medtronic people are going to be rolling their eyes and looking at their watches, but you'll just have to bear with me. Not everybody's heard me say this ten times!

If you tell me that a survey has been done, you don't even have to tell me who the survey group was, or what the purpose of the survey was, and I'll bet you lunch that one of the takeaways from that survey will be, "the survey respondents want more and better communication." Think about every survey you have ever read, whether it is about marriages, customers, staff – you name it – it is all about.... So, I think that what that tells us is that no matter how hard we try, we are *never* going to communicate sufficiently, but that does not mean we should quit trying. It is a process of continuous improvement.

So what kind of communication are we talking about in the General Counsel role? The fundamental, I think, a basic communication we need to lay the groundwork for success – as a General Counsel, or any other lawyer, I believe – is what I call the "contract" with the client, or in the General Counsel's case, the client manager or client spokesman.

In this case, the lawyer should have *very* frank conversations with the client manager – in most General Counsels' case, the CEO – about expectations and boundaries and this can't be a one-way street. For example, a corporate lawyer might ask the general manager, "What would you like me to do as your lawyer?" And the answer could be, "Keep quiet, stay out of our way, and we'll call you if we need you." Now that sounds like it could be a pretty good job, right? Just hang out at the golf course and wait until somebody calls.

But we have an obligation, not only to listen to what the client wants, which the client might say, "What I want is for you to be quiet and stay out of my way," but we have an obligation to persuasively advocate for certain goals, and to advise that client spokesman on the importance of certain behaviors and certain actions, things that might be clear to us but may not be obvious or in the top of the mind of that client manager.

In the long run, being mindful of these things and putting these "must do's" on the table, is the

lawyer's responsibility and will actually contribute to the economic success through contributing to the good reputation of the company.

So this has to be a dialogue, this contract setting, with both sides engaged open-mindedly, setting goals for the lawyer-client relationship. Here is where it gets a bit tougher: defining "success." When we look back a year after this conversation with the General Counsel and the CEO, what will we say is "success"? You can not – it is easily done with hindsight, but I think it is very important in these conversations, in setting this contract of expectations, to define "success," and then that will drive the specific actions we need to ensure that success.

So let's look at a couple of examples. First, something all in-house lawyers and our outside advisors love: the budget. Just like every other function in the corporation, believe it or not, corporate legal departments need to operate on an annual budget, and we need to manage that budget.

Now, I have heard some corporate counsel say, "Look, I don't have any control over this litigation. I don't have any control over the activity. So they give me a number, I can't manage it anyway; it doesn't matter." Well, at the end of a year, that General Counsel might succeed, if it appears that the legal spending was below the budget. But it would just be a coincidence! More likely, the budget is going to be over-spent because of some new lawsuit, some new merger and acquisition activity – *something* new that wasn't anticipated in the budget – and the finger will be pointed at the General Counsel, and they will say, "You blew your budget," and all he or she is going to be able to say is, "I told you so; I told you I couldn't make it."

Well, that is not really a very satisfying scenario in either case – either to coincidentally make your number, or to just throw up your hands and say, "I knew I couldn't make it, so I didn't try to manage it." So what I have seen done, I think, is effective. It *is* true that many things occur during the course of a year that we didn't plan on, and we have to deal with them. A lawsuit gets filed, or a deal comes up. But how about the General Counsel and the CEO sitting down at the beginning of the year and saying, "Here's our budget, and here are the assumptions that build that budget. On these assumptions, we can make this number. We can manage the cases, and we'll manage our outside counsel, and we can do that. We're good at what we do, managing what we know."

Now, if new cases come in, if we get some cases dismissed or settled, whatever, the ins and outs have to be accounted for, and we need to sit down each time – "Oh, here comes a deal – are we going to hire lawyers for that deal; who is responsible for it; what is the budget for that; what is the forecast"; and adjust. So at the end of the year, you can look at here was the original number and these assumptions; new cases came in, and cases were moved off; we made this acquisition and this happened, and these were the adds; and in each case, the pluses or minuses get managed, so that at the end of the year, you don't just throw up your hands and say, "I knew I wouldn't make it." But you're held – the General Counsel is held, with management, to getting to the sort of revised number, *constantly* revised, I would say. Now, that doesn't mean you just revise it every week, say, "Well, I guess that law firm spent ten more hours; we're going to have to increase the budget." It is not that. It is the ups and downs from the original forecast, or new, unforeseen matters.

Now, the other thing this does, implicitly at least, is it says to management, the non-lawyer part of management, that there is an obligation on *all* of our parts – not just the lawyers, but on everyone's part – to manage and be conscious. If we attract a new lawsuit, if we send lawyers marching down a path toward an acquisition or whatever it is, that's going to cost money, and somehow we have to have shared accountability for that. It isn't just lobbing it – "Oh, it must be legal, lob it over the fence and it'll be on the lawyers' budget, so we don't need to worry about it." I think by highlighting, managing these assumed cases, etc., and then looking at the ups and downs over the course of the year, you share responsibility.

Now, the budget is fairly straightforward, I would say. But there are other instances where I think this contract works well, and in the budgeting process, it is really, the General Counsel is in pretty much of a gatekeeper role. But if we want to get the General Counsel out of that role, let's look at a different example.

Now, this will be left intentionally vague, so don't read anything into this. Let's say a company has a series of very similar lawsuits arising out of the same products, some widget. The CEO says, "Why on earth do we keep getting these same lawsuits over and over again? Can't you lawyers do a better job?" Well, the gatekeeper General Counsel might say, "CEO, we are getting – we have so many of these cases, we're getting *really* good at managing the number. We know exactly what every one of these cases is going to cost us. So, you asked me to manage them by budget; that's what I'm doing; and if you want us to do something different, we might lose control over the way this spending goes."

Here's an opportunity for the General Counsel to move *out* of that gatekeeper role, to move up the chain and say, "You know, if we use some of the techniques *other* managers of functions in the company, such as production managers have to use – I refer to Six Sigma training, which I have had at a different company and I'm sure everybody who used to be on my staff is tired of hearing this – but if you think about the manager of a light bulb factory who has to be assessing constantly, "Are there defects in my end product? What is the defect? What can I do about it? What causes that defect? How can I eliminate that?"

I like to think, and all the litigators in the room probably hate this, I like to think of every lawsuit as a defect, and that includes if we are plaintiff. Something has gone wrong if you have to sue somebody, or if you get sued.

Just relax, Marty, this is going to be okay!

But if you think about it from the business manager's point of view, think of "lawsuit" as "defect."

Now, in this pretty simple example I have given, the General Counsel should be able to say to the CEO, "Let's look at why these widgets have this failure, and I will work with some engineers and product designers and production people, and we will figure out what causes the defect, and if we can get rid of the defect in the product, we will get rid of the litigation." Now, there might be a new litigation, but each time we should be doing the same thing.

So the General Counsel in this role goes way beyond counselor, enabler, advisor, and becomes a real value-add partner in the broader business proposition, and really becomes a leader in the so-called "learning organization," to say, "Let's learn from what goes wrong and not just keep repeating the same mistakes."

Now, the beauty of contracts like this is that they have clear expectations, clear goals, and where you know where you want to get, you can set clear responsibilities for the legal department and the non-lawyers: how are we going to get there. It really integrates the so-called legal problems with the business decisions, and you reach a contract with shared responsibility, so we can become partners in success and not just gatekeepers of problems that come up.

We'll turn now to some similar discussion about the relationship between the General Counsel and outside counsel. Obviously, a big part of the General Counsel's job is managing the inside, and the relationship with the Board and the CEO and all the things I have talked about, and hopefully transforming the job from swatting flies to anticipating problems and helping to create value that way.

Now, the traditional role of managing the relationship with outside counsel, of course, is find the right lawyers for the right job, get good advice, make decisions along the way based on that good advice, and generally doing what you can to make sure that your outside lawyers' interests are aligned with the company's.

Traditionally, this was hire the right people, get the job done the right way, examine the bills, negotiate over the hourly rates, and now this just isn't very satisfying. We have all got better things to do than haggle over hourly rates. If I were going to remain as General Counsel at Medtronic, I would try to do everything I could to get at a better kind of relationship with outside counsel, a more, I think, satisfying relationship, that isn't based on the billable hour, but is based on a definition of shared success. It is similar to the contract that I talked about between the General Counsel or any corporate lawyer and the client spokesman. We want to get the conversation *away* from, "How much do you charge per hour, and how many hours will it take?" to "What's our objective here, and what will we consider success?"

Now, having been a partner in a big law firm, as well as a General Counsel, it is clear to me that the outside lawyer and the client don't have completely consistent goals. Of course, everyone wants to win every case and every negotiation. But let's be realistic: it doesn't happen. The facts are the facts. So unless your terrific, talented, win-at-all-costs lawyers in the outside firm understand what the company considers as "victory," the *only* incentive they have is to leave no stone unturned, do the best they can, find every possible nuance in the case, which means, in the system we live with most of the time, more hours spent by more lawyers, and at the end of the case, somebody says, "How could you have spent all that time, charge us all that, and we lost?"

Well, we can avoid those things, I think, and it is not fair to anyone – it is not fair to the General Counsel; it is not fair to the company; and it is not fair to the outside firm – to have this kind of, "Let's look at the risks and benefit after the fact, and criticize." I will say that the General Counsel ends up being on both sides of that, because the General Counsel will hear from the CEO, "Why did we spend so much money and lose the case?" and the General Counsel has little choice but to turn to the outside lawyer and say, "Why did we spend so much money and lose the case?"

> "I like to think of every lawsuit as a defect, and that includes if we are plaintiff. Something has gone wrong if you have to sue somebody or if you get sued."
>
> – *Terrance Carlson*

So think of your General Counsel client and try to help him or her out.

I'm not suggesting that we're just going to scrap the billable hour. Just, "Well, let's get rid of it and do something else." We have to be more creative than that. Law firms came up with the hourly billing rate – people tell me – this is way before my time, even. I remember when I first left my firm. I had been out about 90 days, and they asked me back for one of these, "What does the General Counsel expect from his outside lawyers?" Even at that time, I was thinking, "Wow, this doesn't seem right that there is this hourly rate and it assigns the same value to every minute of input." Well, one of the senior partners at my firm said, "Well, the origin of the billable hour is some stressed-out General Counsel whining about bills that he got, just saying 'For services rendered, $100,000,' so we adopted the billable hourly rates, and that is all predictable." So it is my predecessors, broadly speaking, who forced the issue of billable hours, and now many of us are saying, "Well, let's undo that and think of something more creative."

See, to me, the challenge is, the problem with the billable hour is, is it really true that every minute somebody spends on something is of equal value? Absolutely not, we need to define what value is to the client, and then the client needs to be willing to share in the upside as well as in the downside.

Now, remember the recommendation I made for corporate lawyers to form a contract with the company, with the CEO. The same goes for the relationship with outside counsel. I think when a firm is asked to take on an assignment, if it is a case, if it is an M&A, if it is a licensing deal – whatever it is – let's not have conversations about hours. Let's talk about what is the value to the company? What is success? Then let's measure. If we get to this success, what is that worth to the company? If you can do it in ten minutes, why shouldn't the company be willing to share in that success with you and have a defined amount that you would be paid for achieving the success, and the firm, of course, being expert at risk assessment and handling hundreds of these kinds of licensing deals or cases, ought to be in a position to say, "We can do that. We'll take the downside risk to a degree, but we expect to share in the upside."

Now, in litigation, I admit, it is a little tougher because you don't always know what bogeys might be out there. So what I have done in many cases is say to an outside firm, and we'll pay for this, "Come in for a week, talk to anybody you want to talk to, look at any e-mails, open any file drawers. One week. Come back and tell us about the strengths and weaknesses in the case." In my experience, you can get to an 80% confidence level in one week.

Now, there are always surprises and there are the e-mails you didn't see and somebody will testify later on and come up with a surprise. But I find if we can get this early assessment, now we have faced the facts. Outside counsel can come in and say, "Well, you know, you've got some regrettable e-mails here. You've got this and that." I was talking to Marty earlier, and I said that if somebody sues us and says "You owe us a hundred dollars," and we do this assessment, and somebody says, "Well, yeah, there's a promissory note somebody signed; I guess we have a little problem here," we need to face those facts. If we are in a relationship with outside counsel where we are sharing the ups and downs, the risks and rewards, counsel has to be willing to say, "You are going to lose this case, and we are not willing to take this on a kind of shared-risk basis, because we found a promissory note. You had better just write a check."

It is rarely that easy. But I think that this idea of setting a realistic goal based on this early assessment, "what is likely to happen out there, let's spell out the best we think we can do," and maybe there are grades of success; place values on that, and come up with a sophisticated way of sharing in the rewards of that success if we get there.

I would also like to encourage outside lawyers, and those of you who become General Counsel, to partner in using these principles of Learning Organization and Six Sigma or similar things – you don't have to go with those trademarks. The reason for this is I believe that there is no better lesson for a company to learn than from a lawsuit. I would include in every engagement with outside lawyers an obligation that when the case is done, to come back into the company, and not just to the lawyers, but to the managers who were involved and who might be involved in similar things in the future, and say, "Here is what we learned from this case and let's not do the same thing again. Let's eliminate, if we can, the cause of the lawsuit we just had, whether we won or lost." Winning lawsuits is rarely a great pleasure, especially if you are the defendant. We have spent millions and millions of dollars and won lawsuits, and there is not a whole

lot of celebrating going on about that. So we would be much better off avoiding getting into those situations than spending millions to win.

So I would encourage outside lawyers, in bidding for a case, even a negotiation over a deal – why not? Deal with post-mortem and just have that as a standard practice in everything we do, to create a "learning organization."

So, I am sure I have used up more of the time than Jack wanted me to use talking about these things. It is just that there is plenty to say in a job like this!

I just want to close by reiterating to corporate lawyers, client spokesmen, executives, outside counsel, people who want to become a General Counsel: communicate. You can never communicate enough. Define your success realistically, place a value on that success as best you can, and then figure out how to partner best to achieve that, and I think fairly share with whomever is involved in that success; share the rewards.

Thanks very much.

JACK FRIEDMAN: Thank you very much. Before we go on to our next speaker, I'd like to ask a quick question. Later we will have the more formal roundtable discussion.

Could you tell us a little bit about the Legal Department of Medtronic?

TERRANCE CARLSON: There are approximately a hundred lawyers in the Medtronic Legal Department, and that may sound like a lot, but we have many more H.R. professionals, just to put that in context.

There are about 60 lawyers in Minneapolis. The rest are in other places in the United States and California, Southern California, Northern California, Memphis, Massachusetts and then we have lawyers in Switzerland, Australia, Japan, China, and Hong Kong. I may be forgetting some. About one-third of those hundred lawyers are intellectual property lawyers. We have an in-house Litigation Department; an Employment Law Department; and Regulatory Affairs. I'm sure I'm going to forget somebody. We have lawyers who have migrated out of the Legal Department into meaningful jobs like Compliance and Corporate Development and Emerging Markets, so that hundred count doesn't include the people who have gone into other parts of the company.

JACK FRIEDMAN: This is one question that people ask about a multi-national company: When you have a legal matter which cuts across different jurisdictions, different states, or different countries, is your approach to assign one law firm to coordinate the lawyers in all these different areas, or do you work directly with each area?

TERRANCE CARLSON: It depends on the case, of course. We do have an in-house litigation group, and an in-house mergers and acquisitions legal group. So they will tend to find lawyers in the right jurisdiction and manage them directly. Sometimes we get involved in these massive, multi-district cases or class actions that require a sort of coordinating firm to coordinate the activities. There may be multi-district cases arising out of the same kinds of facts and different firms handling different aspects of that. But then you tend to be a coordinating firm, as well.

JACK FRIEDMAN: Thank you very much. A statistic that I saw – I'm not sure if it is completely accurate – says that half of all litigation done by corporations broadly, not just I.P.-oriented corporations, is in the I.P. area. Our next speaker is Martin Lueck.

MARTIN LUECK: That's such a good warm-up! Let me just say on behalf of myself, and on behalf of Robins, Kaplan, Miller & Ciresi, Terry, congratulations!

TERRANCE CARLSON: Thank you.

MARTIN LUECK: I can say from experience, it doesn't overstate the case to point out that Medtronic has been on the cutting edge and leading edge of a lot of issues, not only as they impact the company and the external legal environment, but also, I can say for my own part, we've learned a lot through working with your law department on at least what I think are going to be issues and areas that law firms and corporate legal groups need to get better at in the future. Clearly you can see your hand behind many of the things that the company does, and you've had considerable influence in your years at Medtronic. So I did want to recognize that right away.

TERRANCE CARLSON: Thank you.

MARTIN LUECK: Secondly, I will say I do still take pleasure in winning lawsuits! Not to set up a debate down the road.

What I would like to do is follow up on some of the things that Terry raised in his remarks. Some, I think, obvious and very much in the public legal debate today. A few others that, in listening to what Terry had to say, I think they're a bit more subtle, even to the point of sublime, and really haven't reached the foreground yet of discussion between outside lawyers and those individuals charged with managing organizations and managing legal problems for organizations.

It is not hard to observe, just looking at the daily AmLaw reports, that the legal industry in general is experiencing a period of rapid and profound change in many dimensions. Some of those dimensions we are bombarded with every day, when we see, particularly on the coast, large law firms jettisoning significant numbers of lawyers and adjusting their business model to a changing economic climate. I know Mark's going to talk a little bit about the I.P. side of it down the road, but all of this change is not driven, at least in my view, by a single event or even a single cluster of events, but really has to do with shifts in our complex economy that we'll be trying to sort out for a very long time.

As I look at a table from our firm that has a number of young lawyers, I think the world that they practice in will be very different than the world that people of my generation practiced in. I think it is fair to say that, as I look back and bridge the generational divide, if you will, between folks who are 10, 15 years more senior to me, and then look at the younger folks, I have probably lived through, and people my age have lived through, a period where the law has transformed from a professional endeavor into much more of a corporate approach. Some decry that; certainly, there are aspects of it that I think are unfortunate; they will be cast to the winds.

From another perspective, I think it is absolutely necessary that today's lawyer look at what he or she does in a light that is not just bringing legal advice, not just solving problems, but is plugged in to an equation that you can call either the "value equation" or, you know, you can use any name you want for it, but it is really oriented towards bringing about a resolution of a client's problem that takes into account all of the needs and objectives of the client, and does it at a cost that is proportionate to what that problem requires both in resolution and what that problem represents to the corporation and overall risk. In many ways, that's a way of looking at the oft-said platitude, "the billable hour is dead." I don't believe the billable hour is dead, but I think there is a great deal of learning

that needs to take place on both sides of the law firm-client equation to get at more effective means of delivering legal services that make sense to clients, and that are useful and valuable to clients.

So let me step back and talk a little more about what I mean when I say that we have transitioned somewhat from the law being a profession to a bit more of a technical exercise on some levels. This goes back to one of the subtle points Terry made in his comments when he talked about the need for General Counsels to adapt themselves to learning the techniques and approaches of what others within the corporation are doing. For example, Operations, Finance & Administration, Marketing and borrowing some of those techniques in addressing some of the global problems that the company faces.

I think, Terry, you put it in the context that if you have a widget that's causing lawsuits, don't just look at it from a legal perspective; go out there and borrow from Operations and find a methodology that corrects why the widget is coming out and get rid of it. So it is with law firms. If you look at this value equation or value proposition on both sides, you have two areas of significant unknowns. They overlap between both, but I would say generally categorized on the business side, what happens in litigation, how to understand litigation, how to predict results in litigation, and how to understand what the "value" to the company of the litigation might be at any given point along its continuum, is an *enormous* unknown.

When people come out of even the very best business schools in this country, they are taught very little business law. In general, folks who are coming out of those schools are spending their time on business cases, marketing cases, finance, things of that nature, and they're relying on Legal as an administrative function to advise them. So the very people that Terry is dealing with every single day, who are the folks who are making the policy decisions on behalf of the company, with his assistance and advice, have very little specific hands-on training, in general, with what's involved in litigation.

On the law firm side – alright, if I took a show of hands, I'd be very interested to know how many of the lawyers in the room have a degree in Political Science. I would venture to say – raise your hand if you have a degree in Political Science. I'm not knocking it, because my undergraduate degree was playing the trumpet! Okay? So it didn't exactly prepare me for making recommendations to people in business situations or technical situations! But it does point out that we do not bring to this equation a whole lot of common understanding of one of the things that Terry talked extensively about: budgeting and billing and conveying value to the client. You couple that with the fact that most lawyers, if you are in a litigation situation, you are

> "...the problem with the billable hour is, is it really true that every minute somebody spends on something is of equal value? Absolutely not, we need to define what value is to the client, and then the client needs to be willing to share in the upside as well as in the downside."
>
> – *Terrance Carlson*

trying to figure out where is this litigation going, what is it going to cost, what is going to happen; you have a lot of fear! Those fears can run from: what is the other side going to do to make this expensive; what's going to happen with the judge; to when I get into this case, am I going to find a box of documents the client didn't tell me about that absolutely change the nature and character of the case? So the last thing I'm going to do is change my revenue model by going away from the billable hour and betting on all of these various risks that could be out there that might upset the course that I think I am on.

So again, going back to something Terry said, this is a place where law firms and the lawyers in them and the people that run them need to pay a lot of attention over the next five years to look at legal services and the delivery of legal services very much like a corporation would look at componentizing the cost of any of the operations that they engage in.

I think it is fair to say that when Medtronic looks at a new product that it wants to develop, invest in, build a plant, and push out to consumers, doctors, and patients; they have a very good idea of what they expect to get on a return for investment. They know what everything they do costs, and they have a very clear picture of what that return might be. Lawyers, in general, have very little idea what things cost in terms of what they do. Okay? I don't think I know very many lawyers who can stand up and say, "A summary judgment motion costs 'X,' a deposition costs 'Y,'" and so on. You can componentize it down to just about any level you want.

But at some level, that is what, as we look at the pressures that this economy has put on everyone, and from the outside counsel perspective, we're acutely aware that the folks who entrust us with their legal matters are under enormous pressure within their companies to deliver results. It is kind of like what Dan Aykroyd said in *Ghostbusters*, when he and Bill Murray were being thrown out of the university because they had been exposed as basically false academics. Dan Aykroyd says, "You guys don't know what it is like out in the private sector! I have been there! They expect results!" Alright? That is what is expected internally! There's very little in our learning that tells us, gives us the tools we need to assess what we're doing and marry that up to a specific objective that meets the goals of the General Counsel and meets the goals of the company.

So I'm going to conclude my remarks, because I don't want to go too long; I don't want Jack to get upset with me; I just want to kind of set the stage for this discussion later on. The second thing that Terry said that I think is going to be the absolutely critical dynamic that characterizes the successful attorney-client relationship going forward on the value side is the word "communication." It is not just the communication of Terry telling me it has to be cheaper. It has got to be communication back to Terry, "This is why it is going to cost what we say it is," and that goes back to my point of developing greater technical acuity in our understanding – it is not good enough to just say, "Well, we had a case two years ago where it cost this, so we're charging 'X' more today than we were two years ago, so I'm going to multiply it by .15 and that's how we come out with our number."

It is not good enough for Terry to just say to me it has to cost less and take my answer. The people that he reports to need to be educated. So, I'm always struck, in every case, by how difficult it is to explain to clients what the risk envelope is in litigation. It is not because the clients are dumb. It is not because I'm a poor communicator. Well, let me say not *solely* because I'm a poor communicator!

But it goes back to this notion that people come from these two very disparate worlds, and the billable hour has largely been a proxy for value over the last many years. The point is, as we go forward, there is going to be greater pressure from the corporate side to demand results and value for their legal spend, and there is going to be a corresponding need on the part of the executives and the lawyers who advise them to understand how to package what a case is about and put an appropriate value on it.

The last thing that I will say about this is it is not enough, really, for the outside lawyer and the General Counsel or the individual within the General Counsel's group who is supervising the matter and guiding the litigation to have an agreement. Business executives need to begin to under-

stand the value that their lawyers bring. Very often our firm has had a long-standing tradition, going back 70+ years, of sharing risk with clients. Quite honestly, we would like to do a great deal more of it in defense cases and in plaintiffs' cases. It really comes down to going back to what Terry said about communication, both doing a very thorough assessment of the case, and then having a candid communication or series of communications about that, and educating both sides of the line – the lawyers and the clients – and not just from the General Counsel's perspective, but getting a commitment from the executives that they, in fact, see value for doing this.

The only way we can get away from the billable hour model is if we develop both sides of those equations and law firms become more dialed in to not only what their services cost, but what they're worth, and executives and General Counsels become dialed in to what value resolving some of these problems brings to their side of the equation.

JACK FRIEDMAN: Given the economy, deals falling apart, and more businesses suing each other for large amounts of money, is the mentality of these groups about a contingency fee of some sort? Will it be done more often, in your opinion?

MARTIN LUECK: Made a proposal to a company recently to share risk with them in a case in which they would be a plaintiff. It had a large price tag to it. There was push-back on the price, and we were more than happy to absorb a significant piece of that ourselves in exchange for an incentive payment down the road. That could be defined according to any number of results.

JACK FRIEDMAN: Is there an institutional problem with corporations not thinking that way?

MARTIN LUECK: Yes. Well, yes! I mean, basically, the business executives did not want to have an arrangement like that. That goes back to my point about the unknown of how to understand the risk envelope.

I think what we proposed was in the best interests of both the law firm and the client. But there wasn't enough learning on the side of the client to be comfortable with that. So I think there is not an experiential baseline yet that people have had that leads them to think, "At the end of this case, I'm willing to pay my law firm 'X' dollars in consideration of the fact that they shared the risk and they took a discount on their revenue stream." They're going to look at it and say, "Well, I'm paying way more than I would have had to pay if I just paid the case on an hourly basis, and therefore, I'm not going to do it." So that's one side of it.

The other side of it is law firms are inhibited from making those sorts of proposals because, you know, I would say the information and the data are there. We haven't really answered the call as a profession to dig down into that data and learn what it really tells us.

You know, we're coming off a period of 15 years of constantly expanding work for outside law firms, and that the legal profession, or let me say, the legal system in general, is remarkably efficient in one sense overall for what it accomplishes, but one of its goals on the ground floor level is not efficiency. So we have, in some respects, been in a cycle that has rewarded inefficiency rather than rewarded efficiency. I don't think corporations understand how to reward efficiency, and I am not sure in the main that we, as lawyers, have done enough to understand what *is* efficiency.

JACK FRIEDMAN: I appreciate that. Thank you. Our next speaker is Mark Mathie from Texas.

MARK MATHIE: Thank you. Terry, it is good to see you. I would like to extend my personal regards and Sam Baxter's personal regards. We at McKool Smith think the world of you. At McKool Smith, all of our clients are perfect. We like working with them all. But with regard to Terry Carlson and Medtronic, Terry is more perfect than others, and his team is more perfect than others.

On a personal note, one of the things that I always find remarkable about the Medtronic team, and I do think this comes from the top, is their amazing capacity to still be good human beings in an extremely difficult and results-driven environment. I think that is a compliment to you, and I think that is a compliment to your team.

JACK FRIEDMAN: Medtronic is rated as one of the best places to work.

MARK MATHIE: Jack Friedman asked me to speak on I.P. litigation. I thought, "All right, I.P. litigation. What would be useful to a group of lawyers and sophisticated business people?" My conclusion was, "Not much!" You folks already know most of what I would say with regard to recent developments in patent law.

I also thought that the audience would be familiar with the high cost of litigating patent cases. So, instead of discussing legal fees in patent cases, I thought that I would break down some numbers for you regarding trends in patent litigation.

First, filings of new patent cases are on the decline. In 2007, we had 2,831 patent cases filed nationwide. In 2008, that number was down to 2,707 cases. Thirty-seven percent of all the patent cases are filed in five districts. They are the Eastern District of Texas, the Central District of California, the Northern District of California, the District of Delaware, and the District of New Jersey.

The venue with the highest number of filings of patent cases is the Eastern District of Texas. In 2008, 306 of the patent cases were filed there. The next closest venue in terms of volume of filings in 2008 was the Central District of California, with 193 patent cases. The Northern District of California rounded up the top three venues with 171 patent cases filed there in 2008.

Second, the bad economy is having a direct effect on the number of cases that are being filed. Several publications report that there was a 10% drop in patent cases from 2007 and 2008. Although 2009 is not over, these same industry publications project that the number of patent cases filed in 2009 will fall from the number filed in 2008 in a similar way that filings decreased from 2007 to 2008.

Third, in 2008, the number of patent applications increased from 2007, but at the current pace, are on track in 2009 for a 10% decline. We think those numbers are all significant in trying to project in the future what type of I.P. litigation will be filed in the next several years.

Fourth, people here are probably also aware of the pending patent legislation that is attempting to codify two recent decisions, the *Volkswagen* decision and the *TS Tech* case. We think that whether that patent reform passes this year or next year, it *will* codify venue reform. It will essentially make the patent venue test the same as it is in *TS* and *Volkswagen*. Whether or not we see a trend of decreasing patent cases being filed in the Eastern District of Texas or any other specific venue jurisdiction remains to be seen. Under the proposed reform, the test for retaining venue is going to be a fact-specific test. We think that clever lawyers will figure out a way to design their cases so that parties will still be in the jurisdictions that are currently attractive to patent holders. But the one-off cases, where one big company sues another big company in one of these particular venues, will probably decline, if the *TS Tech* and the *Volkswagen* cases do, in fact, get codified.

Fifth, I think everybody's concerned about what's happening with damages. If you adjust for inflation, the average median damage award has remained constant from 1995 to date. I don't know if that is good news or bad news. You can make your own determination on that. But what is of remarkable significance is that the median is still $3.8 million per damage award.

There is a lot of open space out there in the country, including Texas. I think a company like Medtronic needs to always be aware of that. All of the outside counsel here, and all of the in-house counsel and the other business people need to realize that Texas, New York, California – all those places will be viable venues, and plaintiffs will be driven to choose newer venues, attractive venues and fast venues for good results. I think internally, that's where you guys should also be looking, is for faster venues, newer venues and venues that aren't as crowded.

Sixth, most patent cases are settled. Eighty-four percent of the patent cases are settled, according to statistics that were compiled in 2007 and look back to 2001. Only 16% of them are what are called "adjudicated," which means summary judgment, jury trial or bench trial.

Seventh, most cases now are being tried by a jury. That is, we think, the single biggest contributor to large damage awards. We can talk about that when it is a question-answer session, but this is a significant development. Plaintiffs aren't going to give it up their rights to a jury trial unless they're forced to give that right up. Patent cases are now judged as much by juries as they are anybody else.

I'm happy to talk about some recent Supreme Court decisions. We can talk about those in the discussion area.

But the main point of today is to praise Terry for the good job that he's done in seeing some of these trends. There's a lot of data. I'll make data available on the number of settlements, on the number of damage awards, and on some forensic analyses that are trying to put all of this in context. I think the patent area is always an evolving area. There is a lot of safety that you can find if you pick the right law firms and the right jurisdictions, and the company has the right motivations for not only resolving the lawsuit, but filing your patents, protecting your intellectual property, and defending your intellectual property. Thank you.

JACK FRIEDMAN: Thank you. John Stout of Fredrikson & Byron. By the way, I want to admire your bow tie. I always liked the old-fashioned tie that Archibald Cox or some famous legend of the field used to wear. Didn't the great leaders of the Bar used to wear bow ties all the time?

JOHN STOUT: For me, it was a former father-in-law in the Mississippi river town of Burlington, Iowa. He used to cut the lawn in his suit and bow tie. Well, I never took it quite that far. It was an interesting image.

I'm going to start with a bit of a scary thought. For those of you who know Keith Libbey, one of our Chairs Emeritus at Fredrikson, he was scheduled to make some comments and congratulate Terry. Because of a family emergency, Keith was unable to do it. So here's the scary thought. I'm going to be channeling Keith Libbey. If you were Keith Libbey, and some of my colleagues at Fredrikson, that would make you nervous. But we'll add our congratulations, Terry, for a variety of reasons which I'll try to touch on quickly. My focus will be more on the evolving role of the General Counsel.

It is hard to imagine a better example of the importance of that role, and Terry's work in that role and the work of his team, than to think about the kinds of things that he has had to deal with over a number of years, meaning investigations by the Department of Justice, the FDA, other government agencies here and abroad, product class actions, significant I.P. litigation, appeals to the Supreme Court, a host of M&A transactions, governance issues, etc. I mean, I'm sure being born on the Iron Range was a big help! A liberal arts education and other experiences that you've been able to draw on for this company; you've had a lot of experience internationally, and you've had a tremendous amount of development globally, and I think Medtronic was fortunate to have someone whose background in the world, in terms of some of the places where you've lived and served, was available to them during this period.

I think you'd be the first to say this, and you've said it before, you know, you've got a great team there, and you've had people like Keyna Skeffington and Jan Symchych to call on in some pretty critical functions, along with many of the others in that group. In a way, it is recognition of the team and your leadership of that team.

So I wanted to turn to a subject that is near and dear to my heart, that underscores the evolving role of the GC, and has to do with corporate governance. Boards are under incredible pressure right now for their performance. If you look at some of the shortcomings of Boards since the late '90s, early 2000s, you really see issues with Boards' understanding of what it means to be a fiduciary, Boards' understanding of their monitoring role and how to do it, and criticism of how Boards have dealt with the subject of risk. You've seen a lot of that in the recent financial services industry meltdowns.

Sometimes this includes an inattention to, and sometimes a disdain for, continuing education; something many of us who hold licenses have dealt with all of our careers. Medtronic has long had a reputation for excellent governance, and from my perspective, you've been able to be a reliable resource to the Board on these matters. You have upheld that reputation and helped the Board uphold that reputation during its term, which is a great thing. So they have had you to look to.

There is a lot of pressure on Boards right now: majority vote, proxy access, say on pay, declassification, more dialogue with institutional investors, and now, in particular – and I'll come back to this for a minute – their role in handling risk. The first person that the Board looks to in these kinds of things is the GC. It has always been true that the Boards have had a relationship, in most of the companies that are well-governed, with the General Counsel. But it is way more true now than it has been, and the importance of that role, and the dual responsibility you commented on earlier – your responsibility to Management, but also your responsibility to the governing authority of the organization, which is the Board, is critical.

I'm just back late last night from a newly convened panel of the National Association of Corporate Directors, on the Board's role in risk. We will have a report out on that in October, at the time of the NACD annual meeting. But one of the things that was early on a focus of our discussions yesterday was a lot of people think, "Well, the Board's role related to risk is a monitoring role."

Well, there are several areas in which the Board's relationship to risk is extremely direct. The Board, as most of you know, has the responsibility for selecting, evaluating, compensating and terminating the CEO. So the Board has a very direct role in the leadership of the company, and in the leadership of the Board, and in the composition of the Board. It has a very direct role in the issue of leadership succession at the Board level and at

the company level. It has a very direct role with respect to strategy and risk and the tolerances of companies for these, and the boundaries that management teams need to operate under, and it has a very direct role for the approval of decisions brought to the Board by management, including acquisitions, some of which have been miserable failures in the financial services industry.

Again, in all these cases, in all of these instances, the Board is going to look to the General Counsel, and then secondarily to some of us who provide services in this regard. Some of you may remember in the *Disney* case that the Delaware Chancellor, while he decided in favor of the Board, has said in writing and in a number of comments, that if the Board minutes – this is speaking to Terry's role as Corporate Secretary – if the Board minutes had been better, the company might not have spent ten years in litigation.

So the Board looks to the GC as its first authority on many issues, and often on education as to governance practices, as well. About Terry and his team, they've handled a lot of these roles, these changing dynamics, in a sophisticated and sensitive way. They've been leaders, as you've heard today, I think from Terry in his remarks, in seeking and establishing a partnering relationship with their counsel, and having an open dialogue with us on striking the right balance, and certainly, we at Fredrikson, but I'm sure I speak for many of you who also provide services to Medtronic, appreciate that. So it has been a pleasure to be here to recognize you. We thank Directors Roundtable for giving us the occasion, because none of us would have called all of you together on our own! It is a particularly good time to recognize him, with Terry having stepped aside from his role as General Counsel and Secretary on April 30th, and of course, Terry, we would like to wish you the best in the next phase of your relationship with Medtronic, where, yes, even a Political Science degree might be useful!

TERRANCE CARLSON: I didn't have one!

JACK FRIEDMAN: Thank you. I'd like to open up the discussion among the panelists. What sort of opportunities and challenges exist in the environment in which Medtronic is operating? Let's start with the Washington environment. What are some of the big issues that are facing the health care/medical device industry and so forth?

TERRANCE CARLSON: There's a lot of talk, broadly, about health care reform, and there's no question, we need to fix the system for delivering health care to people in this country. There are several proposals out there, and I think from the point of view of a provider of medical devices, there is likely to be some good and not so good in these reforms.

On the good, if first-class health care services are made available to more people, more people ought to have access to more therapies that people like Medtronic produce. So that should be a good thing.

On the other hand, there is constant and increasing pressure on price, the price at which we can deliver these therapies. Sure, everybody would love to make everything available to everybody. But there's a cost to society of doing that. And so rather than make the hard decisions about, "well, Joe is deserving of a pacemaker, but Sally isn't," our society would like to say, "Everybody who needs one should have one." But we really can't afford that. So I think there will be, as they say, the ups and downs of broad health care reform in our industry.

There's been a lot of talk about the FDA and the FDA's role, and is the FDA doing an adequate job? So there are some bills both to expand the authority of the FDA, and people within the agency would say, "We can do more; we need more resources." So there's going to be attention there of, "We'd like a stronger FDA," and I will tell you that companies like Medtronic believe in a strong FDA. It is essential to the system of delivering health care that we have a strong FDA, an FDA that reviews carefully the applications for approval of devices and performs its oversight function. Companies like Medtronic have no quibble with that. Indeed, the crux, one of the core elements of the preemption doctrine that I was going to save time to address, is that there is a strong authority at the FDA who will review the application and the pre-marketing approval process for Type III medical devices. We want a strong partner, a strong approval authority in the FDA.

Having gone through that process of at least the law as identified by the Supreme Court in February of last year, it is because this is a balancing act for all of society. The goodness of having these devices out in the market – if you have a properly made medical device and it fails, while it is unfortunate that there may be a failure, there are probably 10,000 people whose devices haven't failed, and if we're going to preserve the innovation needed to continue to make these devices, we believe that this narrow sliver of preemption that medical device companies have under law is essential.

So, while you may read in the press that it is sort of absolute immunity of medical device makers from all litigation, don't believe that! It is only some claims relating to some devices that the Supreme Court has said are preempted. But again, we have a need, and we believe in a strong central authority at the FDA as part of that. Medtronic is in an industry where we would like all participants in the industry to be subject to the same standards.

All devices should be safe and effective. We believe in that. If you have a weaker FDA, you may find devices out there that aren't quite as safe or as effective as they can be with a strong FDA.

JACK FRIEDMAN: How does a company like Medtronic get approval in 180 countries around the world? Their governments may have no technical ability to evaluate. Do they trust that the American approval process is good enough for them?

TERRANCE CARLSON: Well, in some cases, that is an important part of it, but it is rarely sufficient. You need to get approval country by country. Some countries are stricter than the United States.

Are they more careful, or do they require greater safety? I don't think we would say that. But they just have, let's call it a *different* process.

JACK FRIEDMAN: I assume it can take years and great cost for the approval process.

TERRANCE CARLSON: Yes.

JACK FRIEDMAN: How long and expensive is it for medical devices?

TERRANCE CARLSON: Well, there are different classes of medical devices. But the most sophisticated would have to go through the premarket approval process of the FDA. It does take years. You need to have clinical trials, you need to have evidence of safety and efficacy, pass an FDA panel, and it is a couple of years, at least. Sometimes it is longer. And then you may have a preliminary indication and a requirement to go and continue another 5,000 patient tests or something. So often it isn't even over when it seems to be over. There's an ongoing obligation to test and report.

JACK FRIEDMAN: As a note for those who are interested, I had the privilege of going to the website medtronic.com. There is a very well-written history of the company which I thought was fascinating. The company started with university-related engineers, literally in a garage. Talk about a parallel story with Apple regarding innovation.

I wanted to ask you, about technical innovation currently. What is your in-house capability? Do you license things from other people? What's the relationship with the universities, for example?

TERRANCE CARLSON: Well, unlike in the pharmaceutical industry, where most of the research is done in labs to find molecules that either excite or inhibit the right reaction in a gene or protein, most of the innovation in the medical device field comes from the field, from practicing physicians, either saying, as in the case of the first pacemaker, Dr. Lillehei saying to Earl Bakken, "I need something, I need a pacemaker for the hospital that runs on batteries." So Earl – he loves to tell this wonderful story – got the schematic for a metronome and made a pacemaker that was run on a couple of six-volt car batteries. You can see the pictures of the devices. You should come up to the company and see the history of these things!

One of the things you also read in the press is this, "Oh my goodness, can you believe medical device companies pay these big fees to universities and individual physicians and clinics?" Well, that's where the innovation comes. We do partner with physicians and with medical centers, because they're the ones who develop workable ideas in the course of treating actual patients. Now, you could just leave it entirely to each individual inventor/doctor to come up with the idea, go to a metal shop or whatever, make the product and do all the wiring and whatever, but that's unlikely to happen – and would certainly be cost-prohibitive. I think you need this partnership between the learned physician who is innovating and thinking of just a new twist on this device and a new feature, and a company like Medtronic to say, "Well, we'll take that. We've got the people who can commercialize that and produce it in volume, and produce it in a way that will get through the screening of the FDA for safety and efficacy."

So it is an essential partnership. It also brings up another sort of challenge that we face in Washington, which is the scrutiny on these relationships between the medical device industry and physicians. In the last session of Congress, a bill was introduced, the Physicians Payments Sunshine Act. I think we may have surprised some of the sponsors of that bill by going in and saying we support it. We support it for everyone. There was an exception in the bill for small companies, and we didn't think that was right. But I remember speaking to Senator Grassley's staff, who I'm sure didn't think they were going to hear me come in and say, "We support your bill." But we did, and we continue to support it, because we think these are essential relationships, not relationships we have to hide, and we think we and other companies should be happy to disclose what these relationships are, which doctors they are with, and what the research generates.

JACK FRIEDMAN: One of the big issues in the health care field is trying to figure out ways in which modern communications can supplement or replace human services. For example, there is remote monitoring. A concern families have is that as relatives get older or they have a particular ailment, can the family collectively raise money for uninsured in-home personal care? Can you afford to have a college student, a nurse, or someone else who will literally be in the next bedroom day and night? Can we use modern technology to lessen this overwhelming burden? Of course, with a lot of the equipment, there is the need to read what the device is reporting.

TERRANCE CARLSON: Right.

JACK FRIEDMAN: Regarding the *pro bono* or charitable work of the company, what would be some of the things that you're proud of in that particular area?

TERRANCE CARLSON: Well, the Medtronic Foundation issues an annual report, and I would refer you to that; you can access that online or we can get it to you. The Medtronic Foundation donates approximately $40 to $50 million every year to various community causes, education causes, and we tend to want to promote things that are in the communities where we have significant operations.

JACK FRIEDMAN: Right.

TERRANCE CARLSON: But it is not limited to supporting health care institutions. It supports culture, the arts, a lot of technical education things. It is a terrific thing, and I know that the Board only recently adopted a resolution to provide the Foundation with another significant amount of money. So that will continue.

JACK FRIEDMAN: You have about 38,000 employees, and many millions of patients.

TERRANCE CARLSON: I don't know the exact number of patients! It is 38,000 and something employees. The statistic is an interesting thing. We talked about measures of success. The company has this, every five seconds – I think now it is actually closer to 4.8 – but, and that says that every five seconds, somewhere in the world, somebody receives the benefit of a Medtronic product. Every five seconds, somewhere. Way back when, before my time with the company, they started

this measure, and it was every five minutes or something like that. Upon first hearing this metric someone may ask, "Well, what is the point of that?" Well, think about what "delivery every five seconds" means. It means we've got the right product, in the right place in the world, in the hands of the right physician, at the right price, to reach a patient every five seconds and that's pretty remarkable! I think it is 17,000 procedures a day. So, it is just an interesting kind of condensed measure of everything has to be right: we've got to have the product – we can't be enjoined from producing the product; we've got to get it out there at a price that the payers will pay for; the doctors can use, they are trained to use; it does the job.

So it is an interesting kind of amalgam of all kinds of things going right to get to that five-second measure.

JACK FRIEDMAN: My mother was a physician who said that she loves to get up every morning, because she felt that when she went to work, she would help somebody's life that day. She said she wished that it were possible for her to do it for free, but since my parents had to pay their bills, it wasn't possible. But she had a good heart feeling that the medical field is one where you really see the results of helping people's individual lives.

I'd like to return to the legal side right now.

One of the problems in patent and all kinds of business litigation is jury trials, as indicated by the statistics presented earlier by Mark. What are some of the challenges in doing jury trials? Do juries understand the technology that they're ruling on?

MARTIN LUECK: I was still stuck on something Terry said about the doctor who needs to be paid for remotely reading the test and hoping that the new system isn't a billable hour approach by physicians.

Anyway, no, I think the jury system generates a lot of discussion in the legal profession in general. From my perspective, having actually tried a lot of cases, both patent cases and non-patent cases, the first thing I'll say is, just because a jury renders a result that isn't necessarily the one that I was advocating or agree with, doesn't mean that the jury is wrong. The second thing I'll say, counter-intuitive, just because the jury reaches a result that may ultimately be reversed doesn't necessarily mean the jury was wrong. Even though that result might not stand.

I think there is a fundamental misapprehension in the public at large in what the role of the jury system is under the American system of justice. It goes back to a series of checks and balances, without getting into – I'm sure many of the political scientists in the room could explain this much better than I can – but, you know, jurors are finders of fact. Judges are the rulers of law. That one has

more training in the law does not make the judge the more effective finder of fact. In my experience, in having tried cases in every region of the country, in both Federal and state courts, is that juries by and large, if they are approached properly and they are presented properly with the issues and given the tools and instructed properly, there is a very high correlation between jury verdicts and at least what I believe is a defensible result on the facts. I'll just go back to one of the things that Mark said, adjusted for inflation, damage awards have remained relatively constant since the mid-1990s. Most of those damage awards are being made by juries under all sorts of conditions, all types of patent cases, across the United States, and that is an astonishing level of consistency.

It is very often overlooked. You know, one result, like someone getting $2.5 million for a burn from a cup of coffee, tends to drive the debate. Whereas the actual population of jury results across the country, when you look at them on average, are both defensible and appropriate.

MARK MATHIE: The jury system in patent cases is defensible based on a plaintiff's right to a jury trial in the Seventh Amendment in a civil case. Jury cases and I.P. cases, they go together now. There is a huge correlation, and often the mistake that is made, and why we think there are aberrant jury decisions from a corporate defense point, is that people do not give enough respect to the collective wisdom of the jury. The jury does understand the case. They do get it. They go home, they get online, and they understand your product often before they walk in the door. They spend time when they're not in the room looking at your product, and they go home and they look at your product. So I think they get it. I certainly think they get it from a collective standpoint. It is obviously a larger philosophical issue about whether they should be looking at it, but people have a right, patent holders have a right to a jury trial as long as they insist on that right. Everybody, whether you are an accused infringer or you are a patent holder, needs to keep that in mind, and it is your trial counsel's job.

JACK FRIEDMAN: Well, let's go to the heart of the question. How can, if you have a sophisticated device and you have a patent issue that "our little screw here is an innovation and the Patent Office was right and . . .," I'm oversimplifying it; I know lots of people who can't figure out a microwave oven or a VCR or something. I mean, all they know is you just sort of push a button, and if you follow this button after this button – but they have not the least idea; how could they really make a decision about which of two products really is the one that should have legal protection under the patent laws? I mean, they might be explained patent law, but how are they really going to understand the technology?

MARTIN LUECK: Well, what's the alternative? Judges making those decisions, who have no more familiarity or capability in that regard than your ordinary, average citizen. So I think the key goes back to what Mark said; it is the collective wisdom that is brought into the jury box, and the common sense and common experience that people bring to these debates. Let's remember in a patent case; what are the things we're asking them to do? Well, we're not asking them to design the device, alright? We're not asking for that flash of inspiration and all of the knowledge that would go into that. That's not their role. We're not asking them to market the device. We're not asking them to develop or build the device.

We're asking them to resolve some very basic questions that people might look at all the time: Who was first? What is something worth? Was someone fair and honest in their dealings with the Patent Office?

JACK FRIEDMAN: Are they credible?

MARTIN LUECK: Exactly. All of these sorts of things. That goes back to the dichotomy where juries are asked to find facts. Again, I can just give one example, and this won't be a technical one, but in trying a case that had very, enormous complexity and abstraction, sitting with the jury after the *Microsoft/ University of California* case, and asking how they came up with $1.47 for a royalty on Windows, they rejected our principal theory, and instead looked at the allocation Microsoft had given to Internet Explorer and its internal cost allocation, and applied a 15% profit margin to that, converted it into a royalty, and they came up with a royalty that was right smack in the middle of the range that we had presented to them.

These are, you know, twelve tried and true citizens from Chicago.

JACK FRIEDMAN: They approached it differently than you had advocated, but came up with basically the same result.

MARTIN LUECK: We gave them the tool; we gave them the alternative evidence of what the value was. But, you know, they were there to negotiate their own hypothetical, to conduct their own hypothetical negotiation, and yes, they took the information that was presented, and they came up with their own methodology of presenting it. Highly defensible.

JACK FRIEDMAN: Now, I have a question for Mark who is from Texas. Why is it that people like to try cases in the Eastern District of Texas?

MARK MATHIE: They like to try cases in the Eastern District of Texas because the Eastern District of Texas is an attractive forum to anybody who holds a patent. There are several reasons. First and foremost, the jury pool. Exactly what Marty was just talking about, and what I have been talking about. Second, the courts have structured themselves, by virtue of their rules and the individual judges' interest to invite the cases.

We talk a lot about the Eastern District of Texas. I think a lot of people in this room are interested in the Eastern District of Texas, and the Southern District of Texas, and the Northern District of Texas.

MARTIN LUECK: Statistically, summary judgment is granted about 8% of the time in the Eastern District of Texas. Are we talking about state courts or federal courts here?

> "You can never communicate enough. Define your success realistically, place a value on that success as best you can, and then figure out how to partner best to achieve that, and I think fairly share with whomever is involved in that success; share the rewards."
>
> *– Terrance Carlson*

MARK MATHIE: We're talking about federal courts.

JACK FRIEDMAN: If I may ask, what is the thing about the jury pool that makes it so attractive to plaintiffs?

MARK MATHIE: The Eastern District of Texas covers a large region. It is highly diverse. It includes rural areas, small towns, and Dallas suburbs. It is representative of what America looks like today.

JACK FRIEDMAN: Let me just give you two pieces of quick data. This is not an anecdote. In the famous *Arthur Andersen* case, the jury didn't speak to each other until their final meeting at the end of the case. All were listening for weeks. They heard the SEC this, and the SEC that. When the jury got together, one person said, "The SEC, isn't that the government agency that sends men to the moon?" And they said, "No, no, that's NASA. This is what the SEC did."

You can either take it as shocking, or you can say that it is the wisdom of a dozen people all helping each other grasp the significance in working together for a decision.

The second piece of data that I wanted to give you is this. At one of our events, a famous former Solicitor General of the United States, made the comment that every member of the U.S. Supreme Court, regardless of ideology, is skeptical to the jury trial in civil cases. There was another speaker with an opposite political philosophy, who writes on the Supreme Court who agreed with him. They're famous for appearing on panels together and rarely agreeing. Many members of the Court wish that the Constitution permitted the post-World War II British solution, which was jury trials in criminal cases for the sake of democracy and individual liberty, but to restrict it in the civil cases. I do want to say, it is an incredible issue.

Anybody in the audience is invited to ask a question or give an opinion.

AUDIENCE MEMBER: Will the possibility of socialized medicine abrogate property rights?

MARK MATHIE: No. It hasn't anywhere else. Absolutely not.

TERRANCE CARLSON: No, you have nationalized health care in Great Britain. By the way, I don't think anybody is seriously talking about socialized medicine in this country. But you have national health care in Great Britain, and you have patents. In the Scandinavian countries and in Canada, you have a coexistence of a national health care provider system and intellectual property rights.

JACK FRIEDMAN: Isn't there an incredible amount of pressure on outside counsel now to remain independent of their clients, with Boards and so forth, just like the auditors. Commentators may be saying, "You've just got to tell the client 'no.' No, just because it is the Bar rule or that's a tradition. We mean *really* now, you've got to fight with your client, or else."

JOHN STOUT: Well, I think there's a lot of pressure, and I think it is important by way of a reminder for us to understand who our client is. That means, in the case of corporate representation, that it really is the corporation and not the individual in the corporation who hires us, or who may provide a lot of work for us. I think that we've been reminded of that by the American Bar Association on several occasions, but it certainly is underscored in the corporate governance arena. And yes, I think we've also been reminded by the ABA that, and sometimes by the Securities & Exchange Commission and other regulators, if we see certain things that are inconsistent with laws or legal duties, that if we can't get those addressed by the company, that we may have a larger responsibility to report those outside.

JACK FRIEDMAN: In the real world, a Board of Directors cannot resist their auditor who walks in and says, "We're not going to put our name to something, and we're going to resign." And the Board goes, "Well, we can either do it with the way they say it, or we can give the world the impression that our accountants think we're not ethical in our practices. Is it sort of the same way now with law firms? Or are lawyers, when they resign, more quiet about it than the auditors who have to trumpet the whole thing?

JOHN STOUT: Sometimes right now we're being asked not to be quiet about it in certain situations, and there is certainly a tension between those kinds of suggestions and what we have traditionally thought of as the attorney-client relationship, and the confidentiality of that, and the privilege protections, which really aren't enjoyed by some of the other professions, and businesses that serve companies. So, yes, we've got some conflicting issues that we have to take account of. But I think the attorney-client privilege is still quite alive and well, thank goodness, in this country.

JACK FRIEDMAN: Well, let me wind up with one question for Terry. In the five minutes a month that you have free from your responsibilities, what do you like to do with your free time?

TERRANCE CARLSON: Yes. Five minutes a month. Well, I hope it is more than that. Well, I'm a Minnesotan, so I have a cabin on a lake up north, near where I grew up. It is, I have told people, over all the years I have maintained that place and we've expanded it more recently, but I have told people my soul lives at Lake Vermilion. So I need to get there every now and then. This wonderful, magical Minnesota weekend, of the coincidence of Mother's Day and opening weekend of fishing season I won't be there! So, you can read what you like into that! But I do like to spend a lot of time there, working the barbecue, lighting the sauna, and getting out and fishing and so on.

JACK FRIEDMAN: I'll tell you a true story. I live in L.A., so I get the chance to go to the Rose Bowl. I'm sometimes sitting with the visiting team's fans. I sometimes ask some of the wives, "Why do you go to the football games?" Some answer, "When else am I going to see my family?"

TERRANCE CARLSON: Jeannette actually went with me and our son. You won't understand this, maybe. She went with us to a place called "Rainy Lake" last summer, and–

JACK FRIEDMAN: She was a good trouper?

TERRANCE CARLSON: She was a good trouper. Caught the biggest fish. And I don't know if we're going to do that again this year, but it was nice of her to join us.

JACK FRIEDMAN: Well, let me thank Terrance. Let me thank the Speakers and their staff, who behind the scenes make this possible. I want to thank the audience, because the whole purpose of the Roundtable is to serve the audience. So thank you very much.

Martin R. Lueck

Robins, Kaplan, Miller & Ciresi L.L.P.

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Martin R. Lueck is Chairman of the Executive Board at Robins, Kaplan, Miller & Ciresi L.L.P.

A trial lawyer experienced in complex business disputes and patent litigation, Mr. Lueck focuses his practice in the substantive areas of patent and intellectual property, antitrust, corporate litigation, construction, contracts, industrial catastrophe, property insurance coverage, fraud, and personal injury. He has represented corporations in the capacity of both plaintiffs and defendants. In 2003, Mr. Lueck guided his litigation teams to secure two large jury awards for patent infringement lawsuits for his clients: $520.6 million for Eolas Technologies against Microsoft, and $30 million for Honeywell against JVC. The Eolas verdict was recognized as the third largest jury verdict of 2003, according to the *National Law Journal*, and the Honeywell verdict ranked #64 out of the top 100 for the year. Mr. Lueck has tried cases to juries in every region of the country, representing many Fortune 500 clients. He was trial counsel in *Electromotive Division of General Motors Corporation v. Transportation Systems Division of General Electric Co., et al.* (summary judgment of invalidity affirmed by Federal Circuit); *Eolas Technologies, Inc. and The Regents of the University of California v. Microsoft Corporation* (jury verdict of $520.6 million, which later settled confidentially); *Fonar v. General Electric Co.* (jury verdict of $110.5 million); *Honeywell Inc. v. Victor Company of Japan and U. S. JVC Corp.* (jury verdict of $30 million); and *UNOCAL Corp. v. ARCO, Chevron, Exxon, Mobil, Shell and Texaco* (jury verdict of $69 million). In 2004, he was named one of Ten of the Nation's Top Litigators by *The National Law Journal*. Mr. Lueck is a Fellow in both the International Academy of Trial Lawyers and the American College of Trial Lawyers.

Robins, Kaplan, Miller & Ciresi L.L.P.

Robins, Kaplan, Miller & Ciresi L.L.P. is a national law firm of over 250 lawyers with offices in Atlanta, Boston, Los Angeles, Minneapolis, and Naples (FL). The firm is, first and foremost, experienced courtroom lawyers who know how to get results, whose focus is on winning at trial, even if the case may never get to trial. Each of the firm's clients has a story that deserves to be told. Robins, Kaplan, Miller & Ciresi's strength is in understanding that story and simply and convincingly conveying it to judges and juries.

The firm's litigation practice represents large corporations, insurance companies, other businesses and individuals as both plaintiffs and defendants. In 2003, *The American Lawyer and IP Law & Business* named the firm "IP Litigation Department of the Year," based on the strength of litigation achievements. The firm's business practice serves a broad spectrum of clients from Fortune 500 companies and industry consolidators to emerging companies and individual entrepreneurs.

In both 2007 and 2004, the firm was named to the *American Lawyer*'s A-List which is made up of the top 20 firms based on revenue per lawyer, pro bono, associate satisfaction, and diversity. The firm's dedication to clients and community are illustrated by most recently being top ranked in *Chambers USA* for litigation (General Litigation – Minnesota), named in the *National Law Journal*'s inaugural "Midsize Hot List," ranking #12 in the country for pro bono by *The American Lawyer*, receiving the Thomas L. Sager Award (Midwest) by the Minority Corporate Counsel Association, and receiving the EPA "Green Power Partner" Award. In addition, the firm has two foundations, The Robins, Kaplan, Miller & Ciresi Foundation for Children and the Robins, Kaplan, Miller & Ciresi L.L.P. Private Foundation. rkmc.com

Mark L. Mathie

Principal,
McKool Smith
Dallas

MCKOOL SMITH

Mark L. Mathie is a Principal in the Dallas office of McKool Smith. Mr. Mathie concentrates his practice on complex commercial litigation, general contract claims, and intellectual property matters at both the trial and appellate levels. His professional experience includes the representation of clients in cases involving allegations of trade secret theft, technology patent disputes, and defamation claims, among many others.

Mr. Mathie's practice encompasses all areas of trial work, including witness preparation, evidence discovery, deposition testimony, juror opinion research, and other areas crucial to the effective and efficient presentation of evidence at trial. In addition to his trial court expertise, Mr. Mathie also handles appellate work for a variety of firm clients, including earning appellate victories in cases delivered before the U.S. Court of Appeals for the Fifth Circuit.

REPRESENTATIVE MATTERS

Medtronic, Inc. v. Boston Scientific. Mark was on the trial team that won one of the largest jury verdicts in the history of the Eastern District of Texas on behalf of firm client Medtronic asserting patents covering the design of balloon angioplasty catheters and polymers used to build the products.

Medtronic, Inc. v. Cordis. Mark represented Medtronic in a patent infringement suit. Mark represented Medtronic in multiple arbitration proceedings related to drug-eluting stents that have settled. Mark also represented Medtronic in a case against Cordis, which has since settled, involving patents covering balloon angioplasty catheters. Mark also won an award for Medtronic and Medtronic AVE in a nine-day arbitration to resolve a multi-billion dollar dispute concerning construction of a patent license agreement.

TransData v. Ametek. Mark represented Ametek in a theft of trade secrets case brought by TransData. TransData dismissed its claims. Enron Corporation Creditors Committee. Mark represented Enron Corporation Creditors Committee in various litigation matters.

Ericsson v. Qualcomm. Mark represented Ericsson in patent infringement litigation involving wireless telecommunications technology.

Fielding v. Gruner + Jahr AG, et al. Mark represented Gruner + Jahr AG in a complex defamation action brought against multiple German media entities by the former Miss Texas and former Swiss Ambassador to Germany. Gruner + Jahr AG received summary judgment, and the judgment was affirmed on appeal by the Fifth Circuit.

McKool Smith

McKool Smith was founded in 1991 by Mike McKool and Phil Smith. The firm has 100+ attorneys in five offices in Austin, Dallas, and Marshall, Texas, Washington, DC, and New York. McKool Smith is recognized as one of the nation's leading trial firms. Blending experience and expertise, our attorneys have established a substantial track record of handling complex trials and settlement negotiations in courtrooms and boardrooms across the globe. Many McKool Smith attorneys hold engineering degrees and have worked as engineers themselves, providing clients with an uncommon level of expertise. When the stakes are highest, many of the world's leading companies call on McKool Smith.

A company's ability to achieve long-term objectives can be impacted by litigation. McKool Smith takes a business approach in helping companies determine their legal options and litigation strategy. Out Commercial Litigation practice encompasses a broad range of commercial actions including antitrust, arbitration, bankruptcy litigation, business tort litigation, class action litigation, contract, environmental, oil & gas, and securities.

McKool Smith's proven team of trial lawyers with years of experience handle white-collar matters for some of the world's most important corporations and individuals. Our International White Collar practice provides counsel in cases involving government investigations, SEC enforcement actions, grand jury proceedings, shareholder lawsuits, internal investigations, insider trading, mail and wire fraud, antitrust enforcement, tax fraud, Foreign Corrupt Practices Act, government contracting and whistleblower cases, FDA violations, accounting irregularities, and environmental litigation.

Intellectual property is a phrase used to describe creations of the mind. These can be inventions, creative solutions, innovations, and even new processes. Intellectual property represents a company's most valuable assets. When those assets are threatened, businesses often come to us for help. Many companies rely on McKool Smith to master the intricacies of their intellectual property, and protect their business interests in court.

John Stout
Partner,
Fredrikson & Byron, P.A.

John practices in business organization, finance, and governance at Fredrikson & Byron. John represents family-owned, closely held, and publicly owned businesses in governance, financial, and international business matters. He advises executives, boards of directors, board committees and individual directors and officers of for-profit and nonprofit organizations on governance, risk assessment, indemnification and insurance, legal compliance, and the legal implications of business strategies and decisions. He has served as an expert witness on governance practices in two securities fraud lawsuits and frequently writes and speaks on corporate governance matters.

John chairs Fredrikson's Corporate Governance & Investigations Group and co-chairs its Media & Entertainment Group. He also is a member of Fredrikson's Corporate, Securities, Mergers & Acquisitions, and International Groups. John is an Adjunct Professor at the University of St. Thomas Law School, Minneapolis, Minnesota, teaching a corporate governance course.

HONORS & DISTINCTIONS

- 2009 Twin Cities International Citizens Award, International Leadership Institute, April 2009
- Champion of the Year Award, Metropolitan Economic Development Association Annual Meeting, June 2006
- 2005 Pro Bono Distinguished Service Award, Fredrikson & Byron, September 2005
- Lifetime Achievement Award, Milestone Growth Fund, May 2005
- Super Lawyer – entertainment, securities & venture finance, mergers and acquisitions, entertainment, *Law & Politics Magazine*, *Twin Cities Business Monthly*, 1998-2006
- Carleton College Award for Distinguished Achievement, June 1992
- *Business Journal*'s Minority Business Advocate of the Year, June 2003
- American Bar Association Section of Business Law 1997 Public Service Award, March 1997
- Distinguished Legal Service Award, *Corporate Legal Times*, September 1997
- Lifetime Achievement Award, Metropolitan Economic Development Association, May 1997

Fredrikson & Byron

We offer services to clients worldwide through our offices in Minneapolis, Minnesota; Bismarck, North Dakota; Des Moines, Iowa; Monterrey, Mexico; and Shanghai, China. We also have access to international legal services through the World Services Group. While a substantial amount of our work is conducted locally and regionally, we have numerous clients whose business is international in scope. Such clients have come to rely on our ability to navigate through the sometimes complex channels of the international legal scene. Our lawyers have developed a broad network of legal contacts in all parts of the country and around the globe that serve as valuable resources for counsel and information.

The thoughtful attention we pay to clients and their changing needs often leads us to recognize better ways of serving them. For example, it's become increasingly vital for many of our clients to develop long-term strategies and systems that strengthen their operations, outcomes, and infrastructures. We developed ancillary services to meet this need; these innovative, non-legal endeavors bring our clients together with strategists and consultants who have advanced knowledge in particular fields, such as health care. Their work complements – and is reinforced by – the work of Fredrikson & Byron attorneys.

We're also a firm dedicated to assisting individuals and nonprofit organizations unable to afford legal services. Our commitment to pro bono work and community service is an important part of our identity and our philosophy. In fact, Fredrikson was one of the first law firms in the nation to sign up for the ABA's Law Firm Challenge, which asks large law firms to contribute at least three percent of their total billable hours each year to work for the public good.