

The In-House World According to Ben Heineman, Jr.

Corporate Counsel

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April 9, 2012

Ben Heineman, Jr., never planned on becoming general counsel of a major multinational corporation. But in 1987 Jack Welch tapped the then-Supreme Court litigator for the GC position at General Electric after a 20-minute interview. What followed was a career that helped transform the in-house legal profession.

Since his so-called retirement in 2005 Heineman has been a busy writer and advocate for in-house counsel, continuing to articulate how the parameters of the profession have changed. A senior fellow at Harvard's schools of law and government, and a lecturer at Yale, Heineman writes frequently for publications including *The Atlantic* and *Harvard Business Review*. The ideas from his essay "[The General Counsel as Lawyer-Statesman](#)" appeared in his forward to the recently released [Indispensable Counsel: The Chief Legal Officer in the New Reality](#).

CorpCounsel.com recently spoke with Heineman about his career, and specifically his thoughts on compliance, regulation, corporate political spending, and corporate integrity. The first installment of a two-part, edited conversation follows.

CorpCounsel: What were the most critical changes that happened during your tenure at GE that shaped the way inside lawyers were viewed within companies?

Ben Heineman, Jr.: The main thing that happened was that we shifted the balance of power from the outside to the inside. The inside lawyers became the real super-practitioners—working with the businesses, helping them solve problems without calling outside counsel for help. That, I think, was point one.

Point two was that the general counsel became critical to the CEO and the board on not just law, but on reputation, public policy, communications, corporate citizenship, and ethics. The role became much broader than giving technical advice. The new lawyers became very senior counselors to the business, and also assumed significant leadership roles in the company.

Generally in the profession, we had a role in changing the prestige and status of people who were working as inside lawyers and general counsel, and made it much more attractive. I think across the Fortune 100 and beyond, a different kind of person began to be hired as general counsel. And I think as the world changed, and 'business in society' issues became a critically important part of the CEO's job—and important to the company and to the board—the general counsel began to have a status inside the company that was comparable to the CFO.

CC: Since you've retired from GE, how do you view the profession now?

BH: The trend that was started a long time ago has only continued in the United States and is starting to take effect in Europe, and to a degree in Asia. I think the idea of what I call 'the general counsel as lawyer-statesman inside the company' has taken hold.

There's now increasing interest in the role, too. I teach a seminar at Yale Law School on the challenges of general counsel. A similar course is taught at Stanford. David Wilkins, a professor at Harvard, studies general counsel, both in the United States and overseas. And this fall, David and I will launch a course on general counsel at Harvard, along with Michael Solender, general counsel of Ernst & Young, who co-teaches with me at Yale.

CC: What kind of feedback did you get about your [lawyer-statesman \[PDF\]](#) piece?

BH: General counsel aspire to and are proud to assume a broader leadership role with more scope and more responsibility and more influence than before, and to have a seat at the table on most of the major issues affecting a corporation.

As I wrote in [High Performance with High Integrity](#) [Harvard Business Press, 2008] when I left GE, I believe that the chief job of general counsel is to fuse those two things that wire the company. That's the essence of corporate citizenship. And corporate citizenship is all about having trust among the employees inside the company, and then outside the company with customers, suppliers, communities, and other stakeholders. General counsel need to ask the first question—*What is legal?*—but also ask the last question—*What is right?*—which often involves taking actions beyond what the law requires.

CC: As the GC role has risen in stature, does the general counsel need to be wary of being too aligned with the business and the CEO? Is there a danger there?

BH: I've been talking about this precise problem for some time. I wrote a piece in *Corporate Counsel* a long time ago called "[Caught in the Middle](#)," and it was about what I call the partner-guardian tension. The core of the GC job is the ability to resolve that tension. You need to serve as a partner to the CEO, both in order to help achieve high performance and to get the trust of the business leaders. But at the end of the day, you have to be the guardian of the company, and therefore deeply concerned about law, ethics, and values.

You can't be either an inveterate yaysayer or an inveterate naysayer. The concern is that because of their own unvested financial benefits—like stock options or restricted stock units—GCs will not be independent. The job requires courage, character, a willingness to advocate for the company's integrity, and indeed a willingness to quit if business leadership continually insists on improprieties. It is resolving that tension that is the most important problem inside lawyers face.

CC: As for compliance, you've argued that [the chief compliance officer should report to the general counsel](#). It's a controversial topic—why do you have such strong views on the reporting chain?

BH: One reason is that I deeply believe that the general counsel's core role is in law and ethics. That is the absolute center of what we do, number one. And the idea that a general counsel worries only about performance and not about integrity is ludicrous.

Number two is, there's no such thing as 'compliance.' Compliance is made up of a large number of sub-specialty areas, both in the financial realm and the legal realm, whether it's money laundering, labor and employment law, environmental health and safety laws—whatever it may be. All the people inside a company who have that expertise work for the general counsel or work for the CFO, and it makes no sense to have a parallel set of experts working for the compliance officer.

General counsel and the CFO are also good at compliance because they're close to the business people—close to the business side in a good sense. They understand how the business works, what the processes are like, and where the problems can arise. The compliance officer is critically important, but more as a critical lieutenant to the CFO or the GC in terms of making compliance a coherent process. And the general counsel can't possibly be the compliance officer because that's a full-time job.