TRAINING FOR TROUBLE

LAW SCHOOLS ARE FINALLY PREPARING STUDENTS FOR IN-HOUSE CAREERS
BY SUE REISINGER AND CATHERINE DUNN

PLUS:
A GC IN THE CROSSHAIRS OVER ONLINE SEX ADS
WHAT SOME LAWYERS DID LAST SUMMER (THINK RED AND BLUE)
ARE YOU READY FOR PATENT REFORM, PHASE II?

David Wilkins and Ben Heineman teach a class at Harvard.

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WHEN YOU MEET BEN HEINEMAN IN A SOCIAL SETTING, HE’S A good conversationalist, capable of all sorts of small talk. At one gathering, he and I chatted about the magazine’s then-new offices, sending the kids off to college, and the venue (Cipriani Wall Street, a landmark banquet hall and restaurant just down the street from the New York Stock Exchange). You’d never guess, from that sort of chitchat, that Heineman is a transformative agent.

But even casual readers of Corporate Counsel know that he is. In his role as general counsel of General Electric Company, Heineman transformed every notion of what a GC and a modern legal department should be. He hired bright, characterful people (every single one I’ve met seems to have wide-ranging intellectual interests, from foreign languages to global economics) and gave them unprecedented power. Post-Heineman, few in-house counsel are content to just sign contracts and cut checks for outside counsel.

Now Heineman, purportedly retired (at least from GE, in any event), is out to transform legal education.

Reporter Catherine Dunn went up to Boston to audit a class he teaches at Harvard Law School on the art of corporate counsel. I looked at the story this morning (we go to press in a few days), and it’s a good read. Heineman and vice-dean David Wilkins posit to the class all sorts of situations faced by modern corporate counsel, and the story encapsulates what distinguishes our readers’ jobs from those of their law firm counterparts.

In an interview after the class, Heineman told Dunn, “This is really a course about how to be a lawyer when the law is only part of any question you’re dealing with.” And that’s precisely it—our readers not only have to deal with lawyering, but corporate strategy, politics, and the often-messy consequences of the unethical (but technically “legal”) actions of their colleagues.

In a companion piece, senior reporter Sue Reisinger writes about how law schools nationwide are finally waking up to the fact that life in-house is, in fact, quite different. And that they need to address that difference in the courses they offer, and the clinical experiences they provide. It’s about time. In a period when the profession is coming under increasing scrutiny and pressure, law schools need to adapt and prepare their students for the real world. They can’t simply be, in the words of Vivia Chen, my office mate and chief blogger for The Careerist (thecareerist.typepad.com), “puppy mills,” churning out graduates without regard for the careers they’ll eventually pursue.

AND THEN, SOME IN-HOUSE JOBS ARE MORE STRESSFUL than others. Sue Reisinger’s been a really busy reporter these days, and she managed to put together two features for this issue. In her second one, “Eye of a Storm,” page 82, she writes about Elizabeth McDougall, general counsel of Village Voice Media.

It’s fair to say that McDougall’s is a challenging job. Her company has come under attack not for its alternative weekly newspapers, but for its website, backpage.com. Specifically, critics have targeted the sex ads that appear on the site, claiming that they aid child sex trafficking. McDougall’s been vilified for defending her client—her employer. I’m not going to go into the merits of either side (McDougall, incredibly to some critics, says that the site’s existence aids in tracking down traffickers). But it’s a perfect illustration of the in-house lawyer’s perfect conundrum. Maybe Heineman will use her situation for his next class.

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TRAINING FOR TROUBLE

Law schools nationwide are beginning to offer courses that prepare students for in-house careers—often by serving up real-life challenges.

TEARS STREAMED DOWN THE CHEEKS OF MARK Belnick, the former general counsel of Tyco International, as he described to Stanford University students what it was like to leave a successful private practice, become a GC for the first time, and then find himself caught up in a major accounting scandal. The emotional moment came as Belnick recalled the pressure when both his lawyer and his wife tried to persuade him to plead guilty to a misdemeanor in order to escape felony charges and a possible 25-year prison sentence. He refused the deal and was vindicated in July 2004, when a jury found him not guilty.

For Belnick, memories of the painful ethical dilemmas he navigated as GC remain all too vivid. And the Stanford law and business students witnessed his anguish up close as part of a class exploring “the role of the modern general counsel.” It is taught by Daniel Cooperman, the retired Apple Inc. general counsel, along with former AIG International Group Inc. GC Sta¬sia Kelly, who is now co-managing partner at DLA Piper, and Stanford law professor Joseph Grundfest. “The general counsel today is the chief ethicist in most companies,” Cooperman says, “and that’s a powerful and daunting role. We ask the students: ‘What could you have done, were you in the GC chair?’ ”

Stanford isn’t alone in bringing the real world of corporate law into the classroom, though most schools aren’t aiming for the emotion and drama that Belnick brought with him when he visited Cooperman’s class two years ago. The goals of most are pragmatic: Law schools are realizing that students need more experience-based learning. That’s especially true for those who plan to be in-house counsel, because the role has changed so drastically in the past decade, under the influence of powerful laws like Sarbanes-Oxley and Dodd-Frank.

“I’ve seen the evolution in the GC role,” Cooper¬man says, “and it is striking and startling. It’s imperative that law schools address this.”

Schools are beginning to make their own striking changes. While approaches vary from campus to campus, all stress problem solving and practical experience over case law and theory. There are, for example, single classes that concentrate on the GC’s role and duties, as Cooperman’s does. At Catholic University of America’s Columbus School of Law, Steven Burkhart, GC at the Bic Corporation in Shelton, Connecticut, taught a spring course on “in-house counsel practice.” Burkhart, like Cooperman, brings in other in-house counsel to help present real-world problems for the class to solve. “In my day,” Burkhart says about offering practical experience, “the size of a school’s law library was a critical factor in grading your law education. Now, what can be more irrelevant?”

Burkhart’s students rave about his course. Jay Goossen was so inspired that he changed his summer plans. Goossen had already landed a summer associate job at a law firm, but had five weeks free before it started. When the university general counsel advertised for a summer law clerk, Goossen convinced the reluctant GC to let him have the job for the first five weeks. “I was applying what I learned in the classroom to a real-life job,” Goossen says. “We were dealing with the same kind of con-

PHOTOGRAPH BY JASON GROW
tract work and managing numerous people’s needs, while looking out for the best interest of the university.”

Other schools’ classes move from the general to the particulars of a GC’s duties. Want to create a corporate compliance program, handle a bankruptcy, or obtain and protect a copyright? There may not be an app for that, but there’s a hands-on class. Several schools also offer clinics where students provide free legal services to businesses that need them. And a few law schools have altered their entire third-year programs to give students a year immersed in real or simulated legal practices rather than theory. One group of law professors referred to the ongoing changes as “a growing crescendo of ferment in the world of legal education.”

Why so many changes? And why now? A number of factors have converged to roil the once-still waters. It began with a 2007 Carnegie Foundation report that sharply criticized law school teaching and advocated significant changes. The report said that schools excelled in training students in legal analysis, but often failed to impart the skills needed to solve real legal problems, or to instill ethical values. “Law schools face an increasingly urgent need to bridge the gap between analytical and practical knowledge, and a demand for more robust professional integrity,” the report said.

READY OR NOT
Students are peppered with probing questions in Harvard’s first class on GCs.

IT’S A SEPTEMBER EVENING AT Harvard Law School. Twenty-two students are being asked to imagine that they are the general counsel of Hewlett-Packard, circa 2010. They’ve worked with the boss, CEO Mark Hurd, for years, and they consider him a friend, too. Then one day Hurd steps into their office with a letter from the high-profile attorney Gloria Allred, claiming that he has sexually harassed her client, a company contractor, and revealed secrets about the corporation.

The instructors want to know what the general counsel should say to Hurd.

Pooja Patel, a third-year, jumps into the hot seat: “I’d ask him if it’s true.”


Sitting next to Heineman is his coinstructor, professor and vice-dean David Wilkins, who prods further. “Is this just a question of [Hurd’s] personal ethics or morality?” he asks. “Why is this not solely a personal matter?”

Another student chimes in. “Because he was in a position as an employer.” Others keep going: He was allegedly using company funds. Hurd is the face of the corporation. He was allegedly dispensing insider information. “So why isn’t this privileged?” Wilkins asks.

Now Patel’s got it. “Because there’s a conflict between his interests and the company’s interests.” Bingo. The general counsel represents the company, and the privilege belongs to it, not the employees.

The exchange sets the stage for the challenging questions to follow, including how to inform the board about the allegations, what role the GC should play in the internal investigation, and whether it’s worth ousting a CEO for lying about several thousand dollars in expenses—as Hurd eventually was.

Welcome to “Challenges of General Counsel,” a new offering at Harvard this fall, taught by Wilkins, Heineman, and Ernst & Young general counsel Michael Solender. While Heineman and Solender originated the course at Yale Law School in spring 2011, this semester it’s Harvard students who are wrestling with about a dozen case studies that range from global sourcing at IKEA to BP’s handling of the Gulf oil spill. The guiding principle for each discussion is to paraphrase the syllabus) not just “what is legal,” but “what is right.”

“David Wilkins (right) and Ben Heineman Jr. teach Harvard Law School’s first course on GCs.”

“This is really a course about how to be a lawyer when the law is only part of any question you're dealing with,” Heineman explains in an interview after class is over.

Heineman’s 18-year tenure at GE earned him recognition for helping to transform the role of general counsel into that of a high-level corporate decision maker. Since his retirement at the end of 2005, he’s been busy articulating his blend of idealism and realism through a number of writings, among them the book High Performance with High Integrity, the 2010 article “The General Counsel as Lawyer Statesman,” and regular contributions to this magazine. Now, through case studies of businesses in
A collapsing economy drove the point home with a vengeance. While the cost of law school soared, the number of law firm jobs for beginners diminished. The result, says law professor Brian Tamanaha, of Washington University Law School in St. Louis, is “broken economics.” Tamanaha has questioned the true value of a legal education in his controversial book Failing Law Schools. The book won widespread publicity, and is perhaps best known for its attack on how universities manipulate U.S. News and World Report’s annual ranking of law schools. But the author also suggests that schools offer courses to better prepare students to practice, and develop new models that address today’s economic realities. “You need to look at the bottom line for students,” Tamanaha says. “There’s a point where you have to ask: Is this worth it?”

FACED WITH THESE PRESSURES, LAW SCHOOLS ARE BREAKING with tradition. As proof, the Institute for the Advancement of the American Legal System at the University of Denver has compiled a list of modern legal classes aimed at “educating tomorrow’s lawyers.” Many of these courses contain elements especially pertinent to would-be corporate counsel. Some classes are special additions to legal education, such as one on white-collar crime at Golden State University in San Francisco, where students get involved in all aspects of a case—from gathering facts to crisis, the course is introducing those ideas about leadership and ethical problem-solving to a new generation of lawyers-in-training.

Wilkins calls it a “cutting-edge” approach to legal education. A pioneer in his own right, Wilkins has studied the legal profession for more than 25 years. Law schools have been doing a better job at teaching students “some of the skills of lawyering,” he says. “But what they haven’t been doing a very good job of is teaching them how to think about the role of the lawyer, and how to approach the kinds of complex problems that are inevitably at the intersection of law, business, public policy, psychology, and human relations.”

Alumni from the course echo these sentiments. Mark Fitzgerald, who graduated from Yale Law in May, took the class last spring. Prior to law school, he and his brother started, and then sold, a specialty food company. So he already had a good idea of how business and legal decisions are intertwined (“We couldn’t make a move without calling our lawyer,” he says). But by his third year at law school, Fitzgerald was feeling burnt out and frustrated with scholarly courses that seemed to offer a “very narrow” window onto the law.

The GC course proved the perfect antidote. He found the seminar crisp and fast-moving, and enjoyed the push-back from Heineman and Solender, as they tested the students’ judgments. Fitzgerald draws a contrast between those discussions and, for example, learning a doctrine like the business judgment rule. “Okay, so I understand that rule now. But you don’t then think about, well, if this business had been in Thailand, and it had come to the general counsel’s attention that the corporation was violating local labor laws, what would they do?” he says. “This class, for me, was really the first class that implicated all of those concrete issues.”

Nafees Syed, a 2L at Yale, also raves about her experience in the class. It made her think beyond the “legal consequences” of advice given to a client. “You, as a lawyer, need to consider ethical aspects,” she says. “You need to consider business aspects, answers. Solender points to the running theme of “the lawyer in the cauldron of a business crisis.” “The GC must deal with executives, the board, stakeholders, the media. By definition, these were challenging legal circumstances for many experienced legal professionals who had years of experience under their belt,” Solender says. Expecting students “to absorb this material, and process it, and analyze it at a sophisticated level is a big ask.”

Back in Cambridge, the case of Mark Hurd is only the first business crisis under the microscope. As class winds down, Heineman steers the discussion to the PR aspects of Hurd’s messy exit. Although statement did little to convey that sentiment when Hurd resigned, contributing to the public relations firestorm that ensued. “Does anyone have any idea of how they could have handled it differently?” Heineman asks.

Daniel Doktori raises his hand. Suppose the board had said this: “He was a great CEO, in the business sense, but HP is bigger than that.” Heineman reads aloud the one line from HP’s statement that explains Hurd’s resignation: “The investigation determined there was no violation of HP’s sexual harassment policy, but did find violations of HP’s Standards of Business Conduct.” Doktori may be onto something. —CATHERINE DUNN

It’s a course, says Ben Heineman, about “how to be a lawyer when THE LAW IS ONLY PART OF ANY QUESTION YOU’RE DEALING WITH.”

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drafting subpoenas to negotiating a plea deal. Others offer innovative and hands-on approaches to old subjects, such as contracts law, by making students actually negotiate and write the work product.

Another example of a new approach is a course to be offered in January at the University of Houston. It’s projected to be the first of its kind in the country. Focused on the Foreign Corrupt Practices Act, the class will require students to use technology and legal tools to build and run risk-based compliance programs tailored to specific companies. It will be taught by two men who have fought in these trenches—Jay Martin, chief compliance officer and deputy GC at Baker Hughes; and Ryan McConnell, a former federal prosecutor who’s now a partner and FCPA expert at Baker & McKenzie (and a columnist for our website, CorpCounsel.com). Students will grapple with real-life compliance problems from Martin and other business leaders. “I can bring to the course some of the corporate challenges I’ve experienced,” says Martin, who joined Baker Hughes in 2004 to help negotiate an eventual FCPA settlement with the U.S. Department of Justice.

Interest in the class is running high—not only with students but also with some current in-house counsel who want to attend. And it’s no wonder; compliance is a hot topic today, and one area where lawyers are actually finding jobs. “It’s a growing area,” Martin notes, because scores of companies are under investigation every year, “and many of them sign settlements that have additional compliance requirements.”

For some, the curriculum changes are taking too long. James Rowan, a law professor at Northeastern University in Boston, says, “Law schools have for years been slow to adopt opportunities for students to actually work with clients.” At Northeastern, Rowan supervises a clinic where students help entrepreneurs in economically distressed areas start up new businesses. They do everything from writing contracts, to navigating zoning and licensing needs, to researching regulatory issues. Funded by a $500,000 grant from the U.S. Department of Commerce, the program will try to create a national model that other law schools can follow.

Another innovation in teaching is the University of Chicago Law School’s “corporate lab” [“Send in the Externs,” March]. In the lab, students work on real-world corporate assignments from clients like Microsoft Corporation or New York’s Lincoln Center for the Performing Arts. They might research how a certain law applies to a company’s operations or help another company set up a venture capital fund. Over the summer, the lab issued a voluntary “transactional challenge,” and 80 students signed on. Lecturer Sean Kramer says the challenge involved working on three short, real-life exercises on due diligence, contract analysis, and contract drafting. Finalists get bragging rights to add to their resumes for job interviews, Kramer says, as well as invitations to a fall reception with senior in-house counsel and law firm partners.

But perhaps the boldest experiments are occurring in second- and third-year law programs. At Northeastern,
which has a long tradition of combining classroom academics with hands-on experience for undergraduates as well as graduate students, future lawyers are required to obtain four quarters of full-time experience over their last two years. Luke Bierman, associate dean of experiential education, calls it a “pilot project in cooperative legal education.” Some jobs are paid, some not. They include internships with law firms, corporate law departments, legal aid offices, and judges’ chambers. “We think it’s a better outcome for our students and for the profession, and we think it will be cheaper” than a traditional course, Bierman says.

And Northeastern isn’t the only innovator. At Washington & Lee University in Virginia, the faculty began experimenting with more practical experience for third-year students in 2008, and the idea evolved into a full-blown mandatory schedule in the 2011–12 school year. The reformed curriculum is a blend of actual practice through clinics, externships, practicums that require law practice simulations, or transnational human rights programs. Many of the practicums are geared toward corporate law, according to Mary Natkin, assistant dean for clinical education there. “Every school is doing something in the third year, but no one is doing as much as we are,” Natkin says.

She points to the array of corporate practicums. They include banking law, corporate governance, cross-border transactions, entertainment law, federal energy regulation, mergers and acquisitions, patent litigation, shareholder derivative litigation, and more. One called “failing businesses” requires a student to deal with a hypothetical client whose business is collapsing. The student must work through the problem, often using actual documents from a real case, by trying various strategies that range from restructuring the client’s debt to filing for Chapter 11 bankruptcy. “It’s a very demanding course,” Natkin says.

One novel approach to legal education involves the Web. “LawMeets” is a massive online course that teaches transactional lawyering skills for free to anyone who signs up. Located atlawmeets.com, it is the brainchild of Drexel University law professor Karl Okamoto, and funded by the National Science Foundation. It recently offered a two-week course on the basics of acquisition agreements that used video lectures, four interactive exercises, and two panel discussions by leading transactional attorneys. Some 48 law schools reportedly have asked to use LawMeets exercises in their classes.

THE FUTURE PROMISES PLenty OF ADDITIONAL OFFERINGS. At this writing the Alliance for Experiential Learning in Law was scheduled to host an inaugural symposium in late October at Northeastern. The alliance includes some 40 law schools across the country, from case Western Reserve University in Cleveland to mighty Harvard, which has also joined the party [see “Ready or Not,” page 76]. Northeastern’s Bierman says the symposium expects to bring together lawyers, judges, students, legal educators, and others to forge a new educational model that integrates theory with practice-based learning.

Bierman maps the changes by monitoring schools that are following Northeastern’s lead. He counts at least 20 that now have an assistant dean or director of experiential education in a job similar to his. “Clients are much more sophisticated now,” Bierman says. “What law schools recognize in an increasing way is that our graduates have to be ready to compete and participate in that environment.”

The American Bar Association is also jumping into the fray. It is the most recent group trying to examine the changes roiling the profession and legal education, perhaps spurred on by Tamanaha’s explosive book. In July the ABA named a task force that, over the next two years, is to review and make recommendations on the state of legal education, and on its responsiveness to the needs and opportunities of the legal market. In announcing the task force, then-ABA president William Robinson III warned, “Legal education must be evaluated in the context of the marketplace and the nation’s and world’s unprecedented challenges in an ever more complex global economy.”

Attorney Jolene Lee, a task force member, is looking forward to the review. She calls herself a “big fan” of practical and clinical programs. Speaking for herself and not for the ABA or its task force, Lee says that, like most grads, she wasn’t 100 percent prepared to practice when she graduated from law school. “A lot of things that make a good lawyer are things that you almost only learn on the job,” she says, such as good judgment based on doing the work. Lee was, until recently, assistant general counsel of E. & J. Gallo Winery in Modesto, California, and favors curriculum changes to help students better understand what’s required to practice in-house.

Whatever the eventual outcomes, Washington and Lee’s Natkin believes that law curriculums must keep evolving. “We’re all reacting to Darwinian pressures in the market and from students,” she says. “Everybody is trying to adapt, and no one knows what’s going to work yet.”