

YLR Preview: GCs in the Classroom

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This is a preview of a story that will appear in the Summer 2012 issue of the Yale Law Report.

A short time ago Michael Solender faced a situation at work that mirrored a case study he had just discussed in class a few weeks before. Drawing on the background and discussion he'd had in class, Solender was able to offer solid and informed advice.

The thing is, Solender is no student. A member of Yale Law School's Class of 1989, Solender is currently Americas Vice Chair and General Counsel at Ernst & Young, and co-instructor of Yale Law School's course "Lawyer as Leader: Challenges of a General Counsel."

"Obviously in order to prepare for the class you need to dig in and read everything," says Solender. "You try to read every piece of available material and become conversant on the facts and the law ... as if you were preparing for a Supreme Court argument."

And the counsel he offered to the senior management at Ernst & Young?

"I was able to give the right advice quickly because I had been dealing with a very close precedent to what we confronted," he says.

"Certainly I can make the argument that the course is making me more prepared to do my job."

"Lawyer as Leader: Challenges of a General Counsel" is designed to be a very practical, real-world look at issues faced by GCs and in-house attorneys. Each week Solender and co-instructor Ben Heineman '71 present students with a real-life situation from the business world, offering them a chronology, the facts, background materials, legal materials, newspaper articles and a list of interrelated issues for discussion and debate. The vignettes allow students to think about a situation from the vantage point of the general counsel. One class, for example, focused on circumstances surrounding the departure of Hewlett Packard's Mark Hurd in August 2010 amid a sexual harassment claim. Another class discussed the Enron whistle-blower.



“The vast majority of law school classes are taught using the case method. ... We use more of an approach that I think you would find in a business school where you study real life case studies, as opposed to ... published judicial opinions,” says Solender.

This is the second year that Solender has co-taught “Challenges of a General Counsel,” which originated with a suggestion by Yale Law School Dean Robert C. Post ’77, says Solender.

“I had been teaching for a couple of years— a different course—and Dean Post took my temperature on this as an idea,” says Solender.

Solender knew the course would mean a lot of preparation because it was the first of its kind as far as he knew—but when Dean Post told Solender who he had in mind for the other instructor, Solender was sold on the idea.

The Godfather of the Modern GC

Ben Heineman did not invent the role of general counsel, but he certainly was instrumental in bringing about its modern form. As Senior Vice President-General Counsel for General Electric from 1987 to 2003—under storied CEO Jack Welch until 2001, and then with current CEO Jeffrey R. Immelt—he solidified the idea that the general counsel is the company’s conscience as much as its consigliere. While at GE Heineman put together an in-house legal team to rival any law firm, recruiting top-level lawyers to his team—something quite unheard of at the time.

“The role of the GC has become increasingly important over the past decade,” says

Roberta Romano, Sterling Professor of Law and Director of the Yale Law School Center for the Study of Corporate Law. “They work in partnership with management ... and they’ve had a tremendous impact on the legal profession by innovating in the use of legal services. Even for students who plan to work exclusively in law firms, Ben and Mike’s course is invaluable because many of their clients will be general counsel, and they need to understand their outlook and needs in order to provide a better product. This shift in the role of the GC in relation, with both management and the legal profession, was ushered in by Ben Heineman, who was instrumental as one of the pioneers who reconceptualized the role of the general counsel—professionalizing the legal staff at GE at the same time as reining in expenditures on legal services, and upgrading the visibility of the position while becoming an integral part of the management team.”

During his tenure and since, Heineman has evangelized the idea of lawyer as leader and moral compass. He has written extensively on the theory of the modern corporation and the theory of the general counsel’s role in that firm.

“In my view, general counsels have a broad role: dealing not just with law, but with myriad ‘business in society’ issues such as ethics and reputation, communications and public policy, corporate citizenship and sustainability,” says Heineman. “And I think one of the key things we’re trying to get across in this course is that the first question that inside lawyers should ask is, “Is it legal?” But the last question should be, “Is it right?”

After leaving GE, Heineman took on distinguished senior fellowship positions at Harvard Law School and the John F. Kennedy School of Government. But Heineman also spent a great deal of time lecturing and writing on the purpose of the corporation and the role of general counsel. Then came Dean Post’s offer to co-teach Yale Law School’s general counsel course.

Solender had met Heineman, but did not know him very well, and looked forward to the chance to teach the course with him.

“And the collaboration has turned into what has been a very rewarding exercise,” says Solender, who prior to Ernst & Young served as General Counsel of The Bear Stearns Companies, General Counsel of the U.S. Consumer Product Safety Commission, and as a partner with the law firm of Arnold & Porter. “Part of the joy of this for me is that I am learning as much, if not more, than the students by being able to collaborate, and listen to and work with him.”

A practical course

The interplay between Solender and Heineman is part of what sets the class apart, says Josephine Lau '13, who took the class in the spring semester.

“You’re getting two people who are really at the forefront of their fields,” says Lau. “We learned so much from them about the ins and outs and practical issues of legal practice. The other aspect is that they had so many wonderful war stories.”

A former financial journalist at Bloomberg based in Beijing, Lau was drawn to Yale in part because of its corporate law offerings.

“It’s been really nice to have these practitioners’ courses balancing everything else out,” says Lau who after graduating will work as an Associate at the New York City office of Davis Polk, focusing on mergers and acquisitions.

That’s the kind of balanced approach Yale Law School is committed to offering its students, says Dean Post.

“The course situates Yale Law School at the intersection of theory and practice,” says Dean Post, “so that students can reflect on significant legal and theoretical questions that are likely to arise in everyday practice. In recent years, experiential education has become an increasingly important component of professional training. Not only do courses like this prepare students for a professional career, they inculcate the important habit of reflecting on the larger implications of situations that they will routinely face in actual practice.”

The professional side of his legal education was one of the highlights for Krishna Rao '11, who attended the general counsel course in its first year.

“You had two very, very well-versed, committed practitioners teaching this class,” says Rao, currently an associate in the private equity division of the Blackstone Group, who appreciated that Heineman and Solender presented differing views to the class, as well.

“It’s really cool to see a dialogue between people who, unlike myself, have had years and years of really interesting experience in legal situations and companies,” he says. “They were some of the best teachers I had at the law school—and I had some great teachers.”

Solender's 23 years in the field combined with Heineman's 40 years of experience adds up to a valuable perspective for the students.

"We try to answer questions about how it actually works and address the actual issues you will be dealing with," says Solender.

Of course an hour and 50 minutes per week is not a lot of time to parse a complex topic like, for example the Foreign Corrupt Practices Act or the Whistleblower Act under Dodd Frank, but hopefully it's enough time to teach about hard decisions and judgments corporate leaders must make when law is an important element, but not the only element, says Heineman.

The course is ultimately about trying to communicate great lawyering.

"While it certainly advocates the importance of mastering law, it really involves explaining the importance of breadth of vision, great judgment, understanding where the world's going, and a strong ethical sense," he says. "So we leave students with a sense, hopefully, of what is the right thing to do ... or what is the range of right things to do. Or what are the arguments about the right things to do," says Heineman.

"To me it's much more of a course about 'what it means to be a great lawyer or 'what it means to be a statesman' than it is about general counsels. That role just illustrates larger themes about being a lawyer that we hope students will take with them for the rest of their careers."

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