

TOPICS COVERED

// *Program Advice & Strategy*

Can you share what projects you are currently involved in?

BH My priority for 2016 is to reach the broadest possible audience for my new book, *The Inside Counsel Revolution: Resolving the Partner-Guardian Tension*, which is being published in April by Ankerwycke, the trade imprint of the American Bar Association. I am also thinking about future projects in such areas as improving access to justice or new writing and teaching in areas like the global auto industry which poses every conceivable issue of business, law, ethics and policy.

What insight can you offer regarding your upcoming book, *The Inside Counsel Revolution: Resolving Partner-Guardian Tension*?

BH In essence, the book seeks to advance a sustained argument about what it means to be a great corporation and what it means to be a great lawyer. I hope it will be of benefit to inside and outside lawyers, not just in private companies but also in public and non-profit organizations; not just in the US but around the world; not just today but also tomorrow. I also hope that it will reach a broader audience of directors, executives, students and experts on corporate governance and the role of business in society.

What inspired you to develop the book?

BH For more than 30 years, I have been deeply involved in enhancing the role of the General Counsel (GC) as a key member of corporate management who assists the corporation to carry out the mission of high performance with high integrity and sound risk management and thereby to be a responsible corporate citizen—first as GE GC from 1987-2005 and then as senior fellow at Harvard's schools of law and government and lecturer at Yale Law. I wrote a short book for CEOs in 2008 on these themes: "High Performance with High Integrity" (Harvard Business Press). But, with increasing attention being paid to the role of GC, I wanted to write a much more detailed and extensive account of the transformation which would serve as a benchmark for people to consider moving forward.

What are some of the key changes you have seen in the role of the GC?

PERFORMANCE WITH INTEGRITY

In Conversation with Ben W. Heineman, Jr.

Interview by Les Prendergast

A true subject matter expert, Ben W. Heineman, Jr. shares his perspective regarding the evolving role of the General Counsel. In this interview, Mr. Heineman, Jr. shares details about his exciting new book, and takes us on a journey of overcoming obstacles and creating a framework for success.

BH One thesis of my book is that over the past 30 plus years, there has been an inside counsel revolution of increasing scope and power. General counsel and corporate law departments in top global companies have become far more sophisticated, capable and influential, transforming both business and law in two important ways.

First, the role of the GC inside the corporation has significantly grown in importance. The GC has often replaced the senior partner in a law firm as the primary counselor for the CEO and board of directors. The GC role has broad scope—beyond law—that includes ethics, risk, governance and citizenship. The GC is a core member of top management, participating in decisions and actions not just about risks but also about opportunities, not just about law but also about business, not just about public policy but also about geopolitics. The GC is now often seen as having importance and stature comparable to the Chief Financial Officer by directors, CEOs and business leaders because the corporation requires that it navigate complex and fast-changing law, regulation, litigation, public policy, politics, media and interest group pressures across the globe. As a result, the expertise, quality, breadth and power of the GC and inside counsel have increased dramatically.

Second, the role of GC outside the corporation has also significantly grown in im-

BEN W. HEINEMAN, JR.

THE INSIDE COUNSEL REVOLUTION

**RESOLVING THE
PARTNER-GUARDIAN
TENSION**

Author, Ben W. Heineman, Jr., offers an analytic and prescriptive look at the modern role of inside counsel—as partner to the board of directors, the CEO, and business leaders, but ultimately as guardian of the corporation.

The CEO and top business leaders, including the GC, must, ultimately, be fiercely dedicated to creating, leading and maintaining a uniform performance with integrity culture across the globe.

portance with a related dramatic shift in power from outside law firms to inside law departments over both matters and money. Because corporate law departments are increasingly staffed by outstanding specialists and generalists, inside lawyers have taken on day-to-day management and strategic direction of major issues and major expenditures affecting the corporation. General counsel and inside lawyers are also increasingly advocates, points of contact or negotiators with important public and private parties in both developed and developing economies. On the critical risks and opportunities of “business and society” issues, boards and business leaders now delegate key outside relationships to the GC.

With respect to the book, what are some of the primary messages you would like to share?

BH There are four framing “practical ideals” which are fundamental.

First, corporations, especially global companies, should adopt the fusion of high performance with high integrity and sound risk management as their mission. High performance means strong sustained economic growth through provision of superior goods and services, which in turn provide durable benefits for shareholders and other stakeholders. High integrity means robust adherence to the spirit and letter of formal rules, both legal and financial; voluntary adoption of binding global ethical standards that go beyond the mandatory rules; and employee commitment to core values. The core values of the company, as expressed importantly through the core values of its employees, are essential to strong, trusting relationships inside and outside the company. These values, in turn, can only exist when the company commits to law and ethics and to making those norms operational throughout the company. Law, ethics and values!!

Second, the GC must be a lawyer-statesperson who is an outstanding technical expert, a wise counselor and an accountable leader, tasked with assisting the corpora-

tion to achieve that fundamental goal of high performance with high integrity. For the lawyer-statesperson, the first question is: “Is it legal?” But the ultimate question is: “Is it right?” As lawyer-statesperson, the GC must engage in robust debate on major corporate initiatives about “the ends” of an action, not just “the means” for carrying it out; about what is the “right” role of business in society, not just about what is “legal.” The GC is well positioned as counselor to introduce a dose of constructive challenge to such discussions.

Third, to function effectively as a lawyer-statesperson, the GC must assume a second aspirational role: partner to the board and business leaders and guardian of the corporation. Under appropriate conditions, being an effective partner on business and law establishes the trust and credibility that allows the GC to be an effective guardian. The fusion of the partner and guardian roles turns on deep GC integration in the corporation: being at major corporate decision-meetings (strategy, budget, deals, new products, new geographies, etc.) and being deeply involved in implementation of those decisions. Such involvement means the GC can help the business leaders achieve legitimate commercial goals and give independent views on whether corporate action comports with appropriate standards relating to integrity, risk and citizenship. It requires character, stature, independence and courage so that the GC does not just passively salute and obey when business leaders suggest questionable actions.

Fourth, the CEO and top business leaders, including the GC, must, ultimately, be fiercely dedicated to creating, leading and maintaining a uniform performance with integrity culture across the globe. Culture is the shared principles (the values, the policies and the attitudes) and the shared practices (the norms, systems and processes) that influence how people feel, think and behave from the top of the corporation to the bottom. The GC has a special, critical role in the multiple, interrelated steps—the articulation of the aspirations and the implementation of the actions—essential to a performance

Did you know that more than a dozen chief executives from leading companies such as Jones Lang LaSalle and Hasbro contributed insights to the CEO issue of *Ethisphere Magazine*?

Executive Briefing

with integrity culture. This involves general actions such as clear articulation of policy; robust education and training; embedding systems, processes and resources in business operations; giving employees a voice; proper discipline for failures and proper incentives for good behavior.

The GC must live these four practical ideals across the fundamental issues s/he faces in the corporation: performance, compliance, ethics, risk, governance, citizenship and organizational leadership.

What are some of the problems and dilemmas currently faced by GC who are trying to set the standard of meeting business objectives with high integrity?

BH The GC faces obstacles which critics often cite when expressing doubts about whether s/he possesses the independence to be a true lawyer-statesperson and guardian. These include: negative business attitudes about lawyers; business leaders' lack of understanding about law and policy; a leader's overbearing personality; group pressures to conform; inside lawyer fear of CEO retribution; problems of having only one client and lawyer concern about their compensation. In many recent scandals—from accounting fraud to improper options back-dating to global bribery to the credit crisis—GC and inside lawyers, in their eagerness to be partners, have failed as guardians. They did not act with independence and courage; they failed to ask broad, probing ques-

tions about dubious actions; they failed to say “slow down” or “stop.”

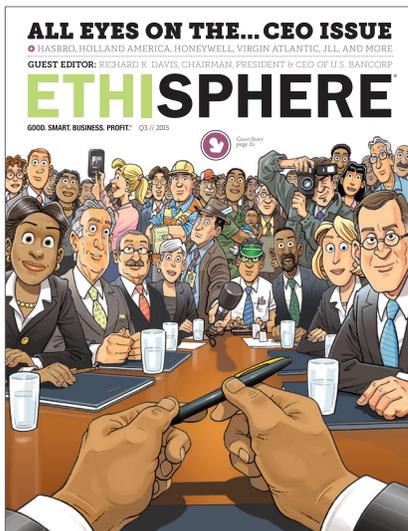
Can you provide some suggestions for overcoming the obstacles you just mentioned?

BH I do not believe that the choice for GC (and inside lawyers generally) is to go native as a “yes person” for business leaders and be legally and ethically compromised or to be a conservative, inveterate “nay-sayer” ultimately excluded from core corporate decisions and activity. The obstacles to the partner-guardian fusion can be overcome by many factors: the character, reputation and independence of the GC; an alliance with other top staff officers (Finance, HR, Compliance and Risk) and a close relationship with the board of directors which should ask for private meetings with the GC and should oversee the GC's compensation and job status. Ultimately, however, the capacity to serve as partner to business leaders and guardian of the corporation turns on the attitudes of the CEO and the board.

I believe these board and CEO attitudes can—and will—exist. This is so not because of theory, but because of reality. The inside counsel revolution occurred in part as a reaction to the excesses and acquisitiveness of outside law firms. But the key driver was the dramatic increase in global commercial complexity and in related “business in society” issues, including core ethical issues, which sophisticated inside lawyers can handle with speed, skill and judgment.

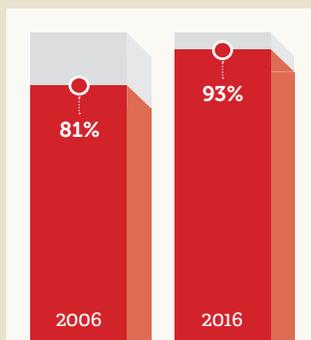
How can readers discover more about you and you work?

BH Search my name at the following websites for numerous articles: Harvard Law School Forum on Corporate Governance and Financial Regulation; Harvard Business Review; and The Atlantic.



WHAT ELSE HAVE YOU MISSED?
 SUBSCRIBE TO
ETHISPHERE
 ONLINE AT
ETHISPHERE.COM

Facts & Figures



According to the 2016 NYSE Governance Services/ BarkerGilmore Survey Report, *The Rise of the GC: From Legal Adviser to Strategic Adviser*, **93%** of respondents consider the GC to be part of the executive management team, up **12%** from ten years prior.

Expert Biography

Ben W. Heineman Jr. was GE's Chief Legal Officer from 1987 to 2005, and is the author of the new book *The Inside Counsel Revolution: Resolving the Partner-Guardian Tension* (Ankerwycke, May 2016). Prior to GE, Heineman was Editor-in-Chief of the *Yale Law Journal*, Supreme Court Law Clerk, Assistant Secretary for policy at the Department of Health, Education and Welfare, and practiced public interest and constitutional law. Since his retirement, he has been a Senior Fellow at Harvard's schools of law and government.