



## The Inside Counsel Revolution

*Program jointly sponsored by Chicago chapters of NACD (National Association of Corporation Directors) and ACC (Association of Corporate Counsel).*

**Ben Heineman** – Former General Counsel for General Electric and author of The Inside Counsel Revolution and High Performance with High Integrity

*Moderated by Tom Cole, Partner in Sidley Austin’s Chicago office.*

Ben Heineman is widely credited with dramatically altering the structure and power of the modern inside corporate counsel role during his nearly 20 years as General Counsel (GC) for General Electric. He spoke for 45 minutes and took questions from the moderator and the audience for an additional 30 minutes. His remarks challenged the audience to go beyond asking whether corporate actions are legal to consider whether they are “right,” as judged against performance, integrity and risk standards.

In today’s top corporations, the GC role is more sophisticated and influential than in previous generations. Inside legal counselors often serve as the primary advisor to the CEO, and they manage resources that go beyond legal issues to include risk, strategy, taxes and government relations. They must have a breadth and depth of experience that includes knowledge of key global markets and expertise in guiding businesses through critical issues involving regulation, NGO’s and the media. GCs today also play a more public role than they have in the past, often involved in discussions with investors, governmental officials and potential M&A partners. Corporate law departments themselves are strengthening the skill sets of their inside legal executives, with companies benefitting from more internal expertise and lower external legal costs.

Heineman framed four key points during his remarks, and both the moderator and the audience asked questions that allowed him to expand on these themes during the Q&A period:

(1) The mission of today’s global corporation is to create trust in their organization by focusing on high performance, high integrity activities that are founded in sound risk management considerations. Board members and executives should pursue opportunities that create strong, sustainable economic growth, but these strategic directives must also adhere to all financial and legislative rules and standards. Lastly, corporations should look beyond simply maximizing shareholder value to optimize the interests of all stakeholders. In response to a question from Cole about dealing with shareholder opposition, Heineman noted that when faced with activist shareholders pressuring management to take short-term steps that seem at odds with long-term value creation, corporate leaders might need to find the “right” shareholders.

(2) The GC must play the role of lawyer-statesman, concerned as much with “is it right?” as with “is it legal?” The chief legal strategist must consider ethical responsibilities to the institution itself, the company’s clients and other stakeholders, the legal profession/system (including pro bono assistance when able) and the health and well being of society. Heineman proposed a list of “complimentary competencies” that will help GCs fulfill these roles, ranging from the ability to ask questions to making solutions a reality. During the Q&A, Heineman noted further that the law does not prevent corporate leaders from taking the right steps, and good citizenship is almost always in the broad interests of the company.

(3) The GC is integral in resolving partner (CEO)-guardian (company) tensions. To do so optimally, top corporate lawyers must be involved in and informed about all aspects of the company’s operations, with unrestricted access to budgetary and strategic information. The GC creates value by helping business leaders implement strategic directives with integrity and by helping corporate leaders design procedures that incorporate appropriate checks and balances. Heineman acknowledged the obstacles that might hinder a GC’s ability to carry out this role, including residual negativity aimed at lawyers and both internal and external pressures to conform or move too quickly. GCs can overcome these challenges through resume-building experiences and by developing alliances with both board members and other key corporate leaders. Heineman commented on the unique relationship the GC has with the CEO. He noted that external law firms can “fire” their clients if management asks their legal counsel to perform tasks with which the lawyers are uncomfortable; similarly, GC’s must be prepared to quit if situations ultimately prove untenable.

(4) Lastly, the GC plays a vital role in creating a culture of integrity within the corporation, building shared principles and practices that influence how employees behave across the globe. Ethical problems almost always emanate from a culture of silence in the face of corruptive practices such as undue pressure to produce results or harsh leaders unwilling to allow dissent. When asked where the corporate compliance department should report within the organization, Heineman reminded audience members that compliance usually incorporates both legal and financial matters; he believes function is more important than form, and compliance can work equally well reporting through the CFO or the GC. Lastly, in answer to a question about the best ways to prepare young lawyers for GC positions, Heineman advised law school case writers to create situations that go beyond interpretations of the law to include leadership experiences.

The audience was highly engaged during both the prepared speech and the Q&A period, and the session ended with Heinemann graciously staying on to sign copies of his latest book, The Inside Counsel Revolution, that were provided to each attendee compliments of Sidley Austin.