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# CORPORATE counsel

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ALM

## In the Beginning

GE's legendary lawyer explains  
how he revolutionized the role  
of in-house counsel.

By Ben W. Heineman, Jr.



# Present at the Creation

**R**EADING BEN HEINEMAN'S THOUGHTS about overseeing General Electric's legal department is a little like getting fitness tips from Victoria's Secret model Heidi Klum. The rest of us are so far from these pros in terms of a starting point, that it's hard to apply their advice.

Still, in the first of a series of articles for *Corporate Counsel*, Heineman offers a number of lessons on how he (and others) transformed GE Legal, and in the process, revolutionized the role of the in-house lawyer. Big or small, well-funded or not, there are a few ideas for your department, too.

**The Blessing.** Few companies can afford to woo Am Law 100 partners and match their compensation for jobs that are below the GC level. GE, with its size and profitability, is alone in this area. But one thing that GE Legal did that surprised me was to have the CEO interview candidates for the most senior positions, such as business unit GCs and functional specialists. If Jack Welch and, later, Jeff Immelt can find the time to bless 40–50 lawyers, why not try your CEO, too? It's clear that this buy-in only helped raise the legal department's profile at GE, and led to better relations with the business units.

**The Specialist.** GE makes a good argument about the need for specialists. And the legal department backs this up with a key cost metric: total legal expense (inside and outside) as a percent of total revenues (in GE's case, about one-third of 1 percent). There is a perennial debate in many large and midsize law departments over the value of generalists versus specialists. While both are needed, GE is a good reminder of the direct connection between specialist attorneys and cost savings.

**The Training.** For a number of years, GE has conducted a weeklong advanced business course for some 30 standout

lawyers. That's not cheap, but it's certainly the right idea. Financial literacy is something that, especially in the post-SOX era, can never be underrated. I bet one of your outside firms would be happy to put together a few classes for some of your top lawyers, gratis. Harvard Business School, ACC, and even *Corporate Counsel's* parent company, ALM, offer these sessions at their conferences, too.

My father-in-law always teased his kids: "Three children and not one a Rhodes scholar!" Well, we can't all be a Rhodes scholar, Supreme Court law clerk, and legendary GC, but we can download some of his best ideas.



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# In the Beginning

By Ben W. Heineman, Jr.

**GE's legendary general counsel explains how he revolutionized the role of in-house lawyer.**

**T**HE GENERAL ELECTRIC EXPERIMENT WAS NOT ABOUT THE general counsel, but about the many superb lawyers who transformed GE Legal—not about an individual, but about the “inside partnership.”

Having just retired after 18 years, I offer some reflections on this core element of what *The American Lawyer* called GE's “in-house revolution.” (*The American Lawyer* is a sibling publication of *Corporate Counsel*.)

Many corporations are still asking whether and how to transform their legal departments (even if they lack GE's scale), and law firm partners are still adapting to clients (with both generalist and specialist in-house counsel) who are at least their peers.

In the past, corporations sought general counsel from the outside—individuals who, like me, had experience in government and in private practice. One of the first and most notable in the “modern era” was Nick Katzenbach, who was hired by IBM Corporation after capping his Kennedy-Johnson years as attorney general.

What distinguished GE was not going outside for its general counsel, but going outside for many of his colleagues: the commitment—not just of the GC, but of GE's CEO, Jack Welch, and his successor, Jeff Immelt—to redefine the role of inside counsel, to drive the highest-quality lawyers across the top of the company,



“Hire the best” was Heineman's motto.

and to build a cohort of legal talent just below the top that could advance upward in the company as the years passed.

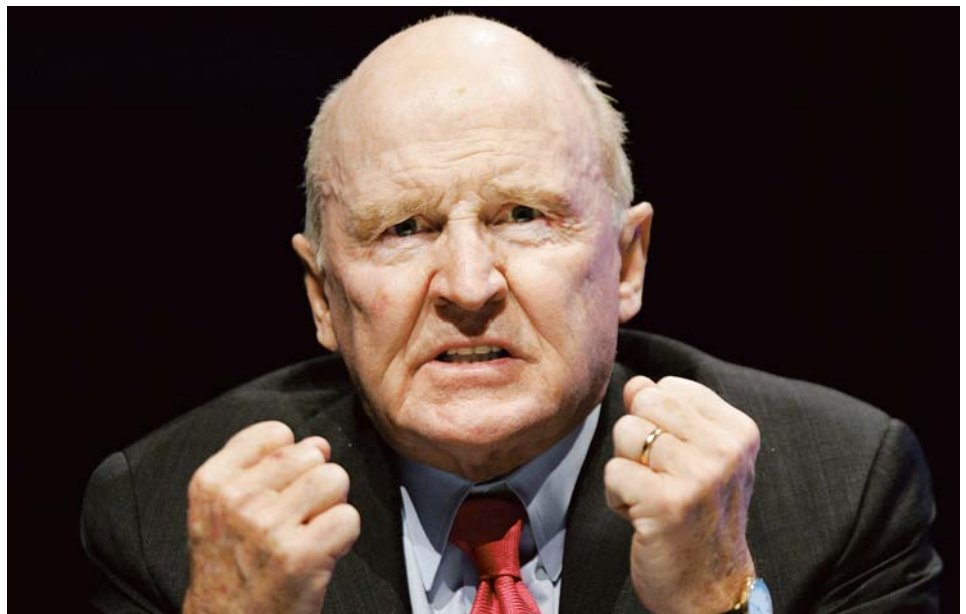
There are many other elements of the revolution—effecting cultural change, building compliance systems and processes, rebalancing relationships between inside and outside counsel, managing a huge inside global firm—but none would have happened without the breadth and depth of the GE inside partnership.

**The Vision.** Inside counsel have two roles that are central to a corporation—and not available, or not continuously available, to outside lawyers. Properly defined and faithfully honored by both inside counsel and a company’s business leaders, these roles are what has made inside lawyering so attractive.

First, inside lawyers should strive to be full members of the business team. Yes, the lawyers must, first and foremost, bring their legal skills, experience, and analysis to business problems. But they also have (or should have) the intelligence and breadth to learn and understand the products, technology, competition, and, most importantly, the public dimensions of the markets in which the business operates.

Others at the table with the business leader come, like counsel, from specialist backgrounds: finance, business development, marketing, sales, engineering, IT, HR. Helping to generate cross-functional energy and synergy in defining problems, debating issues, and developing positions with the CEO on a broad range of issues facing the company is a fascinating task open to curious, energetic, broad-gauged lawyers.

Second, the inside lawyer must, of course, be the guardian of the company’s reputation. This means, first, helping to ensure that the foundation of high performance—strict adherence to financial, legal, and ethical rules—is built with robust systems and processes (usually working closely with finance). Beyond that, inside



THOMAS LOHNES/GETTY IMAGES

with a variety of constituencies.

In both the partner and guardian role, an inside counsel’s ultimate duty is to the company, not the business leader. But an honest and candid relationship with those leaders is essential. Indeed, at their best (and what I sought when hiring), inside lawyers have a broad counseling role (what others have termed the “lawyer-statesman” role) that involves practical wisdom, not just technical mastery; broad judgment based on knowledge of history, culture, human nature, and institutions, not just a sharp tactical sense; the ability to understand long-term implications, not just achieve short-term advantage; and a deep concern with the private good and the public interest.

Finally, GE offered a vision of an

Former GE CEO Jack Welch was a staunch believer in paying top dollar for in-house lawyers.

specialists; that, if it could harness and integrate its talent, knowledge, and experience, had enormous reach and power.

### **The Argument for Inside Lawyering.**

As I tried to woo people away from their law firms, the argument was virtually the same whether made first in the late eighties and early nineties or later in my career. This was not just a sales pitch (although it was surely that), but also a commentary on important aspects of the profession. I invariably said:

- As an inside lawyer, you will be in the center of the action—enmeshed in the fabric and culture of the institution—that will greatly enrich and enhance your fundamental role as partner and guardian.
- You will also work in a unique global inside law firm, striving for integration and interaction: through each of its major business units (e.g., the medical or energy or consumer finance global legal staffs); by specialty group (e.g., the global tax or M&A or IP lawyers); by region (e.g., Europe or Asia); by country (e.g., the United Kingdom or China); and, most importantly, by the senior lawyers (e.g., the 30-plus specialists and generalists who report to the GE GC and meet quarterly).
- You become the client. You will never have to worry about time sheets, or generating business, again. You hire the outside lawyers. I will only get involved in

## **A law firm partner, after agreeing to join GE, called to ask one question: how long was his contract? Heineman’s response: “One day.”**

lawyers help shape the culture of the institution so that formal duties of compliance are strongly supported by an ethos and sensibility of unflinching integrity. Inside counsel also have a special role in understanding the place of the business in society and in leading, or helping to define, the company’s positions on ethics, citizenship, governance, public policy, globalization, and communications

in-house legal partnership operating in a set of varied global businesses with products as diverse as the world economy. This was a partnership that would seek to focus on the future, not just the past; that would play offense, not just defense; that, despite the numbing corporate levels and titles, would be collegial, not hierarchical; that would be comprised not just of broad generalists but world-class

lawyer selection on the most important matters facing the company.

■ The work is diverse and fascinating. Your to-do list will be endless if you have any imagination at all because the beauty of business is that it sails on an ever-changing economic ocean, and we can always build a better ship, find a better course. And you can choose the level of your involvement. You can direct and supervise—or you can cherry-pick and do select pieces of legal work (argue, testify, negotiate) as you wish.

■ You will have a tremendous learning experience. No matter how much you think you know about business and clients from your outside perch, there is no substitute for being inside the belly of the beast. Being part of the company's complex rhythms is different, exciting, and challenging in ways you cannot understand until you do it.

■ You will have significant autonomy from me—in part because the company is so big and because I have direct or dotted-line relationships with so many senior people (30-plus). I simply don't have time to meddle. You will hire your own people, manage your own budget, and make your own decisions. I approve goals and objectives two times a year, have an annual personnel review, and will partner with you on issues that affect the CEO or the board (and the company broadly). I am always available as the senior partner to listen and give counsel if asked. But I believe strongly in hiring the best people and giving them significant freedom to make their own decisions within a reasonable range of discretion and with the business leaders' approval. I will defer to you to let you win—or to make mistakes. But, you should know that we are a performance culture, and you will be judged on results.

■ If you are a lawyer in a business, you will have a direct line to your business leader and a strong dotted line to me. Both the business leader and I have to agree to hire (I produce the candidate slates), but either can fire—so, if you are a GC, your key relationship is with the CEO of the business. He or she can raise you high or dash

you down—and, if you blow that complex personal relationship, there is little I can do to help, although you can count on my strong support when you use good judgment on a tough or unpopular issue.

■ By coming to GE, your career options will expand. You can grow in GE by expanding your current position or being promoted to a new legal or business job. Within a year the calls from headhunters will start, with offers for company legal or business jobs or in law firms seeking a high-quality, sophisticated insider.

**The Money.** The basic financial proposition to law firm partners was straightforward. We would match cash compensation (or perhaps modestly exceed it). This would come in two elements (not unlike law firms): basic salary during the year (the monthly draw), and incentive compensation (IC) in February for the previous year (the annual distribution), with IC guaranteed the first year. Both salary and IC could be expected to rise regularly with performance (of the individual, of the business unit, and of the company—but IC at GE is generally tailored to individual circumstances and not, as at some companies, rigidly determined by overall company metrics). In contrast to law firms, where the cost of benefits

is usually subtracted from a partner's draw, a very generous, company-provided benefit package sits on top of your compensation at GE.

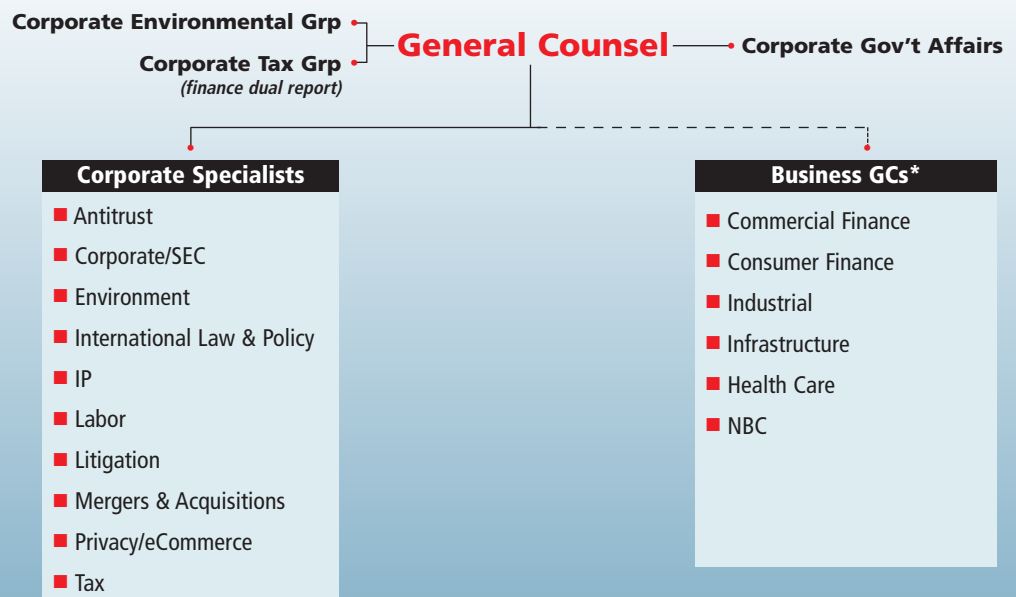
Most importantly, the incoming lawyer would receive a significant piece of equity, in some combination of stock options and restricted stock units. Again, the number of equity units could be expected to increase with performance, and senior lawyers often participated in various long-term performance plans with an option/RSU element. The equity had the obvious effect of giving the lawyer a significant economic stake in the enterprise and creating the opportunity of generating much more net worth than would be possible from a law firm draw.

But the package also had obvious risks. One law firm partner, having agreed to join GE, called to say he had forgotten to ask one question: how long was his contract? My response: "One day." At this level, we were all "at-will" employees, just like all senior GE leaders. We were making a personal bet on our skills and a financial bet on the company.

The revolution would never have happened if Jack Welch had not strongly supported this approach. Many of the young, incoming partners would be compensated

## PUTTING IT TOGETHER

At GE, business GCs report directly to their division heads, but they have a dotted-line relationship with the parent company's general counsel.



Source: GE Legal. \*Large divisions (with their own GCs) exist within these business groups, such as aircraft engines, aircraft leasing, energy, equipment leasing, and real estate.

extremely well by senior GE standards. But Jack, and then Jeff Immelt, instinctively understood the value of the talent, the need to open the doors and windows of the company to people who had other experiences and, most importantly, the need to meet or exceed market to attract the best. Indeed, the legal function was the first at GE to look systematically outside the company for lateral talent.

In all my years, I never remember having a disagreement on the package. Jack and then Jeff would interview the most senior legal people—GCs and functional specialists. Once we agreed on the suitability of the person, the compensation issues were resolved with relative ease. Because Jack and then Jeff intuitively understood the value proposition, we were able to look for almost any partner, from any firm, and make an attractive offer.

GE was hardly a frictionless utopia.

Once we moved past the 40–50 most senior lawyers, whom the CEO had blessed, we often had to make the case strenuously as we hired talented specialists either for corporate or the businesses. And, while I could and would help, business general counsel or headquarters functional leaders had to operate within budgets and manage costs closely even while often spending more on talented newcomers. Of course, part of the theory was that outside costs could be reduced by enormously productive insider specialists—and this has proven to be the case. In the past decade, GE generally has been at the bottom in the second-lowest quartile of large companies surveyed annually by Price Waterhouse Coopers (and now by Hildebrandt International) on a key cost metric: total legal expense (inside and outside) as a percent of total revenues (in GE's case about one-third of 1 percent).

**Careers.** The best proof of the varied opportunities created for the new inside lawyers is found in the careers of the lawyers who took a risk in coming to GE. Of course, as I grew long-in-the-tooth and could look back on the careers of some of the pioneers, this also became part of the recruiting pitch [see “The Alumni”]. All would say, I believe, that their lives were dramatically changed, and that they had careers they could not have imagined when they left law practice.

**Issues.** With respect to the health of the partnership, the senior lawyers in GE Legal worried about recurring issues when I was general counsel and will continue to do so under GE's current GC, Brackett Denniston.

■ Lawyers in European and Asian companies have a much more limited view of the role of inside counsel. The chief legal officer may report to the CFO and be responsible largely for corporate formalities. In lawyer orientation, we tried to explain the much different and more capacious GE Legal vision, but in my time I don't think we did a particularly good job (below the most senior level) of training U.S. and especially non-U.S. lawyers on the broader role we expected inside counsel to play. This needed to be done not just in orientation when lawyers were, frankly, disoriented, but weeks or months later in their careers and in more depth, at single, focused sessions.

■ One related point is that, for lawyers to be business partners, they need to be financially literate, especially in GE's own particular dialect. We have, for a number of years, conducted a weeklong advanced business course for lawyers, aimed at 30 of the high-achieving or high-potential individuals and covering such topics as financial analysis, financial structure, controllership, and GE metrics. But, I again failed to drive this issue far enough and provide online basic business training for all lawyers around the world, using, for example, an examination of a hypothetical deal and an explication of the annual report's financial discussion and analysis.

■ An even more fundamental issue is training lawyers about how to handle the conflicts

## The Alumni

- Some in-house counsel came from firms to GE in the late 1980s and early 1990s and stayed for 15 or more years, often building organizations with hundreds of professionals (tax and environment), and all becoming nationally recognized senior statesmen in their fields. They include: John Samuels (tax), Steve Ramsey (environmental), Rick Cotton (NBC GC), Mike Gadbar (International Law and Policy), Ron Stern (antitrust).
- Some came as specialists and were promoted to GE general counsel. Happy Perkins (transactions lawyer at GE Appliances, then Appliances GC, now GC at Energy); Keith Newman (transactions lawyer at headquarters, then GC at Lighting, now GC at Advanced Materials); David Lloyd (transactions lawyer at Engines, then GC at Engines, and now GC at GE's highly profitable aircraft leasing company); Raymond Burse (commercial lawyer at Appliances, now general counsel of Commercial and Industrial); and, most notably of course, Brackett Denniston, who came as GE's head of litigation and preventive law and then became general counsel of GE.
- Some were GE general counsel who went on to become GCs at other major public companies. Larry Tu (NBC GC, now GC at Dell Computer); Ivan Fong (GE Vendor Finance GC, now GC at Cardinal Health); Bill Lytton (GC at GE Aerospace, now GC at Tyco); Liz Lanier (GE Energy GC, now GC at US Airways); Maura Smith (GC at GE Advanced Materials, now GC at International Paper).
- Some were GE general counsel or senior lawyers who went on to become senior businesspeople in GE: Henry Hubschman (GE Engines GC, now head of GE's aircraft leasing company); Pam Daley (GE's senior transactions lawyer, now head of GE Business Development); Jay Lapin (GC of Appliances and then president of GE Japan).
- And others were GE general counsel or senior functional specialists who became senior business people in other companies: Jeff Kindler (GE senior counsel for litigation, then GC and head of Boston Market at McDonald's, now vice-chairman and GC at Pfizer); Frank Blake (GC of Energy, then head of GE Business Development, now executive vice president of Home Depot).

—B.H.

arising both from the dual role and from the economic incentives in their equity packages. There is always the temptation, even for senior lawyers, to please the business leader and not put stress on the relationship by effectively carrying out the obligations of guardianship. And, in one of the most complex relationships for inside lawyers, they absolutely must go to the company general counsel if problems with business leaders persist (say, hiring questionable distributors in emerging markets), even though they will almost always want to handle the matter on their own. For junior lawyers, who may be working for a profit-and-loss business leader far from the center of the division, this tension can at times be acute. They need to understand when to go up the legal line when they think undue business risks are being contemplated or taken; when there is reputational risk to the company; and, of course, when there is undue legal risk. This set of issues relating to conflicts between the partner and guardian roles requires in-depth training, with examples and hypotheticals, because of its centrality to inside lawyering. This is an issue that applies equally to the finance staff—and Brackett is considering how to develop joint finance-legal training on the tensions inherent in the dual role.

■ Another core challenge that never goes away is effectively integrating global lawyers into one legal culture. At present GE has about 1,100 lawyers, with 40 percent licensed and operating outside the U.S.A. Transnational business must, of course, be global by being local, per one of those oft-repeated globalization bromides. But multinational companies also must have certain uniform values—and those surrounding financial, legal, and ethical rules are prime examples. Moreover, lawyers in Asia or in Eastern Europe or in the Middle East often feel disconnected from the rest of the legal group. As noted

above, there are a variety of integrating mechanisms in theory—such as specialty practice groups or regional and country groups of lawyers that cut across functions and business units—but making them really work, making lawyers outside the U.S. feel that they are at the center of the company, not on its periphery, is a never-ending issue. It requires constant travel, sensitivity, and effort by U.S.-based lawyers.

■ The quest for highly qualified diverse talent never ends. More than 60 percent of the GE lawyers are diverse and/or non-U.S. professionals. Thirty percent of our senior lawyers are diverse. We are always trying to sharpen and augment our diversity tools: inclusion on slates, sensitive headhunters, summer intern programs, mentoring, stretch assignments, work-life flexibility, rewarding leaders for diversity efforts, good metrics, and exit interviews. But we simply must execute in a diverse global company and put more diverse and non-U.S. lawyers in the top leadership positions. So, too, we need to continue our dialogue with the firms—what is your diversity profile, how does it compare with peers, what is the profile of lawyers working on GE matters?—to help the profession to move forward on this vital issue.

But the health of GE's inside firm, ultimately, goes back to where it all began: hiring the best. In 1989 I held my first and last “all lawyers” meeting (we just became too big to repeat it). I uttered a simple sentence that was totally contrary to the prior experience of GE Legal: “We will look inside and we will look outside, and we will hire the best.” To the GE lawyers of the time, accustomed to the inevitable migration up the organization chart as



GE CEO Jeff Immelt, right, with Heineman, blessed the hiring of the law department's top 40–50 lawyers.

seniority accreted, this was a revolutionary credo, despite its deceptive simplicity.

It is a credo that still applies today—to GE, and, hopefully in a fashion appropriate to their own circumstances, to inside legal departments all across the globe.

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*Starting with this article, Heineman will write occasional commentary for Corporate Counsel on developments in the law and the legal profession.*

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