

1

INTRODUCTION: THE INSIDE COUNSEL REVOLUTION

A. TRANSFORMATION

The core mission of the global corporation is the fusion of high performance with high integrity and sound risk management. The ideal of the modern general counsel is a lawyer-statesman who is an outstanding technical expert, a wise counselor, and an accountable leader and who plays a major role in assisting the corporation achieve that fundamental goal of global capitalism. For the lawyer-statesman, the first question is: “Is it legal?” But the ultimate question is: “Is it right?”

This book is about how the inside counsel revolution—which began in the late 1970s and has increased in scope and power ever since—is inextricably bound to the performance with integrity mission of the corporation. It sets out my deeply held prescriptive views about what it means for the General Counsel (GC) to be a lawyer-statesman, assessing all corporate action through the screens of performance, integrity, and risk. It focuses on enduring first principles the General Counsel should follow—now and in the future—in quest of what is “right.” It describes how the General Counsel, working with the chief executive officer (CEO) and other senior executives, must forge an unbreakable

bond among performance, integrity, and risk on a set of foundational corporate issues: business strategy, culture, compliance, ethics, risk, governance, citizenship, and organization. In so doing, the General Counsel must help create the trust in the enterprise that is so vital to its sustainability and durability: trust among employees, shareholders, creditors, customers, partners, suppliers, regulators, media, nongovernmental organizations (NGOs), and the public. To help the corporation achieve its high performance, high integrity, and sound risk management mission, *the General Counsel must resolve the most basic problem confronting inside lawyers: being partner to the board of directors, the CEO, and business leaders but ultimately being guardian of the corporation.*

This *prescriptive* vision is attainable because General Counsel and inside law departments in top global corporations have become far more sophisticated, capable, and influential, transforming both business and law in two important *descriptive* ways I will also explore in this book.

First, *the role of the General Counsel inside the corporation* has significantly grown in importance.

- The General Counsel has now *often replaced the senior partner in the outside law firm as a primary counselor* for the CEO and the board of directors with very broad scope beyond law that includes ethics; reputation; governance; communications; public policy; enterprise risk; crisis management; and, ultimately, corporate citizenship.
- The General Counsel is now often a *core member of the top management team* and participates in discussion and debate—not just about defense, but also about offense; not just about law, but also about business; not just about risks, but also about opportunities; not just about public policy, but also about geopolitics.
- The General Counsel now often has a *broad organizational and leadership role beyond the legal department*—in such areas as tax, trade, environment, security, real estate, customer care, community relations, and public affairs. The GC can have operating responsibilities over diverse units that require broad managerial

skills and that, in many instances, make him the final decision maker in a corporation.

- The General Counsel is now often seen as having *importance and stature comparable to the Chief Financial Officer (CFO)* by directors, CEOs, and business leaders because the health of the corporation requires that it navigate complex and fast-changing law, regulation, litigation, public policy, politics, media, and interest group pressures across the globe.
- All these developments have now often combined *to increase dramatically the expertise, quality, breadth, and compensation* of the General Counsel and inside counsel, with a company's lawyers now being hired from the highest reaches of government, from leading law firms, and from a growing pool of highly talented inside counsel.

Second, *the role of General Counsel outside the corporation* has also significantly grown in importance with a related, dramatic shift in power from outside law firms to inside law departments over both matters and money.

- The General Counsel and inside lawyers, rather than just throwing issues over the transom to law firms, have taken on *day-to-day management and strategic direction of major matters* affecting the corporation—ranging from cross-border transactions to multi-front litigation to international enforcement investigations to consequential public policy debates to building a culture of integrity. This is so because corporate legal departments are increasingly staffed by outstanding specialists in all areas covered by private firms, including antitrust, litigation, tax, trade, mergers and acquisitions, labor and employment, intellectual property, and environmental law. Moreover, outstanding lawyers are now General Counsel of major divisions within companies, not just General Counsel of the whole company. These generalist and specialist inside lawyers—with skills and knowledge at least equal to their peers in law firms—lead mixed inside/outside teams in managing hard problems facing the corporation.

The days of information “asymmetry” when outside lawyers knew much more than inside lawyers are, for the most part, long gone in major corporations because sophisticated inside counsel today invariably know more about the corporation’s business and know as much or more relevant law.

- The General Counsel and inside lawyers have also strongly sought to reassert control over money—over the corporation’s expenditures on outside law firms. Inside lawyers have broken up monopolies or oligopolies that particular private firms had previously enjoyed with particular corporations. They have forced law firms to compete for business. They have focused on cost control through a variety of techniques, from front-end budgeting and negotiated fees to back-end audits and cost disallowance, from preferred provider relationships to “strategic partnerships.” They brought important work inside the corporation by increasing inside legal staff, thus reducing the fees paid to outside law firms as a percentage of the corporation’s total legal spend. Increasingly, they are using new technology and specialist vendors (e-discovery, specialized research, form drafting, contract lawyers) to reduce further the scope of traditional private law firms. *As many leading General Counsel are alums of major law firms, they can directly address the many techniques outside lawyers may improperly employ to pump up billing and revenues.*
- Finally, General Counsel and inside lawyers are increasingly advocates, points of contact, or negotiators with important public and private parties outside the corporation in both developed and developing economies. Because governments affect markets in all nations—along a spectrum from the state capitalism of former Communist states to the variety of “mixed economies” in traditional “liberal” democracies—the “business in society” issues in these diverse global economies pose serious risk and significant opportunity. Boards and business leaders now delegate major responsibility to the General Counsel to help the corporation reach its commercial and citizenship objectives across a minefield of policy, law, regulation, and public scrutiny. The General Counsel and inside lawyers increasingly have direct

relationships with key actors in both the public and private sectors on matters ranging from major legislation to major deals.

In short, General Counsel have risen in power and status within the profession in the past 30+ years, becoming core members of top corporate management and dramatically changing the relationship between inside and outside lawyers. Said *The Economist* in 2012: “the power of in-house lawyers has grown hugely in the past 10 years. The chief legal officer (CLO) is now one of the mightiest figures in the C-Suite.” A close observer of the legal profession recently stated: “The future and fortunes of most of the major business practice firms and their lawyers are now in the hands of corporate counsel . . . The status gap between inside and outside lawyers has largely been reversed.” A preeminent scholar of the legal profession has noted the continuous growth of “the power and prestige of in-house lawyers,” observing that: “In-house legal departments in the United States now also rival large law firms as a destination of choice for talented lawyers” and concluding that “[a]ll of this has profoundly restructured traditional mobility patterns and prestige hierarchies within the U.S. legal profession.” And the authors of a book on the evolution of General Counsel have noted: “The story of the General Counsel role over the past fifty years has been one of increasing prominence, power and prestige.”¹

In light of this transformation, this book advances practical ideals about the mission of the global corporation and about the role of the General Counsel in helping to carry out that mission. It explores ideas that are potentially in tension: the pressures for high performance and the imperatives of high integrity, the GC both as lawyer-statesman and as subordinate to the CEO, the GC as partner to business leaders and as guardian of the corporation, and the importance of risk-taking and the necessity of risk management. In the analysis of key issues—compliance, ethics, risk, governance, citizenship, and organization—I hope to show that these potentially paradoxical ideas can co-exist and, indeed, can be complementary. The tensions—between performance and integrity, between the GC as leader and as subordinate, between partner and guardian, between risk-taking and risk management—can be resolved with the right approach and, ultimately, with the right

culture. I also deeply believe that the framework and ideas advanced here apply to small and medium-size companies, although the scope and degree of implementation may be less robust due to fewer resources.

B. CREDIT WHERE CREDIT IS DUE

The book is, of course, based in important part on my 18 years at GE when I served under CEOs Jack Welch (Senior Vice President–General Counsel, 1987–2001) and Jeff Immelt (General Counsel until 2003; then Senior Vice President–Law and Public Affairs until my retirement in December 2005). As I traveled around the world, I gleaned ideas and practices from numerous exchanges with lawyers and business leaders in other global corporations. The book is also based on the many articles I wrote in the decade after retirement; on my presentations and discussions with lawyers and businesspeople at public and private conferences; and on my exchanges with students when teaching at law, business, and public policy schools, especially in a course co-taught at both Harvard and Yale Law Schools on “Lawyer as Leader: Challenges of the General Counsel.”

But, although I am seen as *one* of the godfathers of the inside counsel movement, I want to be absolutely clear that the movement, in the modern era, began before I went to GE in September 1987. The initial inside lawyer counter-reaction to the dominance of large private law firms after World War II began in the late 1970s. It is symbolized by the founding of the American Corporate Counsel Association in 1982 (renamed the less U.S.-centric Association of Corporate Counsel in 2003). It is also reflected in a number of important articles and comments that reflected on the rumblings of revolution in the 1980s.² Importantly, in the nearly 30 years since my tenure at GE began, there has been an explosion of highly talented General Counsel and other highly talented inside lawyers at top American corporations—and increasingly at leading non-U.S. companies. This infusion of high-quality lawyers inside major companies has accelerated the changes in role, function, status, influence, and power of the lawyers corporations employ. So, I want to stress the obvious at the outset: I was just one of many creating the inside counsel revolution. And I want to salute my

predecessors, my peers, and the succeeding waves of talented General Counsel across the globe for their salient importance and influence in shaping the fundamental shift in the inside counsel role.

But, the GE law department *was* important. That importance stemmed, directly and clearly, from other lawyers who came to GE Legal, not from me. It was due to them, not to me, that GE became one of the symbols of the inside counsel revolution. In the past, some corporations, seeking to enhance the legal function, had 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 after capping his Kennedy-Johnson years as U.S. Attorney General. What distinguished GE was not going outside for its General Counsel, but going outside for many of the GC's colleagues. In my first few years at GE, I replaced 30 of 33 direct or strong dotted line reports with leaders of the profession, drawn from government and private practice. They were equivalent in talent and experience to the top partners in private firms. My goal was straightforward: hire the best. These remarkable people filled key corporate specialty positions (e.g., head of tax, head of litigation, head of mergers and acquisitions, head of environmental health and safety). They also filled key General Counsel positions at our global business divisions (aircraft engines, power systems, medical systems, financial services), which were *each* the size of a *Fortune* 50 or *Fortune* 100 business. *Given the broad, almost Herculean, responsibilities of the General Counsel I outline here, I could hardly discharge them alone but was highly dependent on outstanding colleagues who had an incalculable role in realizing the promise of the inside counsel revolution.* The influx of such extraordinary legal talent into a corporation sounded a thunderclap across the profession and caused many lawyers in firms and in government to consider a position that had not been on their radar screen before: inside counsel.

The GE experience was thus not about the General Counsel, but about the many extraordinary lawyers who transformed GE Legal—not about an individual, but about the “inside partnership.” Together, this multi-faceted and multi-talented GE team of lawyers experimented and innovated—helped shape the path of the inside counsel revolution.

Any influence I had was multiplied a hundred fold by the creativity, imagination, and excellence of my colleagues.³ The GE experiment was totally dependent, as well, on the willingness of CEO Jack Welch and his successor, Jeff Immelt, to redefine the role of inside counsel, to hire from the outside, to drive the highest-quality lawyers across the top of the company—both at headquarters and in the operating divisions—and to pay market prices to acquire the best talent. Without the strong support—indeed, strong endorsement—of the CEOs for whom I worked, it would never have been possible to build an outstanding internal legal team that was an important exemplar of the inside counsel movement.

C. CAUSES: A SCHEMATIC VIEW

The inside counsel movement in the United States grew due to a series of interrelated and iterative causes, some of which have echoed across Europe and Asia (see pp. 450–454). First, as many have noted, the power and responsibility started to shift from large corporate law firms back to inside lawyers during the early 1980s. This was due, importantly, to outside firms' economic arrogance: charging ever-higher fees purportedly based on the number of hours worked and invoiced with a single line stating “for services rendered.” The post–World War II era of economic globalization was beginning to take off, posing increasingly complex commercial problems in multiple jurisdictions. So, too, there was a litigation explosion in the United States. Increased global regulation as well as activism by nongovernmental organizations raised a host of ethical, legal, and policy questions for corporations. These forces increased the demand for inside lawyers who could work closely with business leaders in addressing that transnational complexity. More deals and more disputes required more attention of more business leaders, who began to discover that “making” expertise inside the organization, rather than “buying” legal services outside, could increase speed, quality, and productivity—and “all deliberate speed” of inside lawyers in a competitive business environment was seen as just as important as quality and productivity.

Second, as inside lawyers began to assert their power, the position of General Counsel, which had once seemed a backwater for lawyers

who failed to make partner at major law firms, began, in the 1980s and 1990s, to attract many more premier lawyers from outside the company. Highly talented lawyers began to realize that the jobs as senior lawyers in a corporation had a number of advantages. General Counsel, and inside lawyers, are enmeshed in the fabric of the institution and positioned at the center of the action. They become clients and never have to worry about time sheets or billing, and, indeed, can control the substantive and economic relationship with outside counsel. Their work is diverse, covering a huge array of markets and products and geographies and extending far beyond the law. Inside counsel are part of an innovative inside legal partnership, which can be an authentic sharing and learning organization across businesses, specialties, and geographies. They can develop much closer relationships with business leaders, other staff, and operational peers than outside lawyers and can advise and execute on business as well as legal matters. They have substantial responsibility as leaders—and would be judged on results and not micromanaged. As leaders, they could prevent problems, rather than coming in as outside counsel to clean them up. Their career paths are enhanced because they could progress to higher legal jobs in the company, become lead lawyers in another company, or cross over to the business side and become business leaders. Finally, if they were willing to bet on themselves and on the company, their compensation—annual salary, annual bonus, deferred cash, deferred equity, and other company benefits—could equal the top of the law firm market or exceed it (often by significant amounts). The news across the profession about the value of inside counsel jobs and the hiring of outstanding lawyers as General Counsel made it possible to broaden the in-house talent upgrade and to hire outstanding lawyers from across the profession for many senior inside counsel positions, not just for the position of GC.

Third, as the inside counsel movement gained momentum in the 1980s and 1990s due to increased responsibility and new talent, more and more business leaders and boards of directors began to reassess the value that broad, creative inside lawyers could add to their company. This value stemmed, in essence, from lawyers being integrated into corporations and being able to act with knowledge and speed as

partners in addressing commercial opportunities and risks and as guardians in protecting and enhancing the company's integrity. The result was that, as some business leaders supported new law department models, other corporations began to take note. They, too, started to hire the new breed of General Counsel who were outstanding practitioners and leaders. They, too, started to redefine the role of inside lawyers, both in the company and in controlling and coordinating outside law firms. Leaders of the legal profession became General Counsel, including former U.S. Attorneys General and Deputy Attorneys General, former Court of Appeals and District Court judges, former White House Counsels, former heads of regulatory agencies or elite units within those agencies, or the top partners in leading law firms. The status of inside counsel increased as a growing number of major corporations made such hires. In GE, after business leaders worked with the new breed of outstanding specialists and generalists, many realized that a step function increase in quality added markedly to their business teams. These operational leaders then supported the promotion of lead lawyers to the small universe of GE officers in a huge global company (inside counsel became 5 percent or more of the only 200 company vice presidents in an entity with more than 300,000 employees around the world).

Fourth, all the broad trends that had started the inside counsel movement in the late 1970s and early 1980s accelerated in the last decade of the 20th century and the first decade of the 21st. Faced with new global competition, corporations embarked on a never-ending pursuit of cost reductions and productivity increases. This included marked efforts to reduce outside legal fees and the overall legal spend by relying more on inside resources or non-law firm outside vendors. The day-to-day complexity of new technologies, new products, new global markets, and new competitors made ever-more important the day-to-day involvement of inside lawyers on business teams to achieve performance goals. The concept of simply manufacturing in the United States and exporting overseas became vastly more complicated, sophisticated, and nuanced. Global corporations often evolved into large, complex matrix organizations, with corporate functions from manufacturing to sales to marketing to finance under the control of

distinct units in many nations. Such differentiation created the need not just for cross-functional integration, but also for uniform global standards on a host of issues from quality to compliance to security to ethics to values. Similarly, beyond dramatically changing business challenges, a host of trends increased companies' legal, ethical, reputational, country, and operational risks, which could best be mitigated by having inside lawyers working closely with other business and staff functions in company operations. These included endemic corruption in new markets, new employees in those markets with different values, complex global supply chains, and ever-present challenges of doing business in economies with deep government involvement in "markets." Moreover, regulatory trends continued to pose increasing challenges and risks, including, for example, treating accounting issues as legal violations; criminalizing aspects of regulatory enforcement; setting rules through enforcement rather than rule-making; an exponential increase in the size of criminal fines, civil penalties, and private settlements; and confronting multi-front wars as public and private parties investigated or sued corporations in multiple jurisdictions. All this was accompanied by striking increases in the sheer number and complexity of regulations in multiple jurisdictions, in the reach and voice of nongovernmental watchdog organizations, and in 24/7 "above-the-fold" or viral electronic media coverage of corporate misdeeds. Broadly speaking, all these trends combined to make "business in society" issues of vital interest to CEOs and boards of directors.

Finally, the raft of outsized scandals since the turn of the century underscored the need for boards of directors, CEOs, and senior business leaders—including, importantly, the General Counsel—to build strong integrity and risk disciplines into corporate business processes. These corporate failures began with Enron and WorldCom and were followed by a torrent of subsequent scandals, including HealthSouth billing fraud, Siemens and Wal-Mart bribery, BP's drilling rig explosion, the Toyota and GM product safety issues, and the plague of problems affecting the financial services industry (misdeeds relating to the mortgage market, money laundering, the Madoff hoax, disclosure failures, and collusion on LIBOR and currency). These front-page

problems had a dramatic impact on companies: time and effort responding, executives fired (and indicted), huge expenses for internal forensic efforts, huge costs for external criminal and civil sanctions, and loss of reputation. But, the problems also affected stakeholders: market cap tanking, employees laid off, customer relations shredded, suppliers losing wounded corporate customers, creditors stuck with debt, and communities losing business and tax base. Importantly, the scandals also scarred the reputations of boards of directors and, notwithstanding director and officer insurance, even imposed personal financial loss on some directors in catastrophic matters like Enron and WorldCom. As a result, another boost was given to the trend toward hiring highly talented, highly sophisticated General Counsel with reputations for independence who could help prevent improprieties and who could credibly help respond to legislators, regulators, media, and NGOs when such improprieties occurred.

These reinforcing causes produced the inside counsel revolution in the United States. *That revolution was driven by the necessity of a changing business environment—and, if it endures as I think it will, that necessity will sustain it.* Right-minded companies needed broad-gauged GCs. Today, the revolution is now reflected in the attention paid to the subject: special legal trade magazines covering the inside counsel “beat”; regular stories in the mainstream media; innumerable conferences pitched to inside lawyers (or to law firms trying to understand the strange new law department beast); and increasing attention to the role of General Counsel and corporate law departments in law reviews, in books, and in courses at law and business schools. It is also reflected in directional changes in the profession itself—for example, the growing number of lawyers working inside corporations; the exponential emergence of outside vendors selling a wide array of services to inside law departments; the decline in corporate spend on outside law firms for basic matters (although huge litigations, transactions, and bankruptcies will always boost outside firms); a whole new executive recruiting specialty devoted to finding and hiring lawyers for corporations; the growth of associations of inside counsel; and the increase in the number of General Counsel who are among the five most highly compensated executives listed in the proxy statement.⁴

A personal note about these developments, which I have described schematically. When Jack Welch offered me the job as GE's General Counsel in the spring of 1987, I was a Supreme Court and appellate litigator. I had never met him. I had not done one hour of work for GE. I knew not a single soul at the company. I said to Welch, "You know I am not a corporate lawyer." He laughed: "You'll figure it out." He wanted to transform the function and upgrade the talent both at headquarters and in the operating divisions. But, the simple fact was that, beyond those broad aspirations, neither he nor I had clear, preconceived ideas at the time of what needed to be done, what would happen in GE, or what the broad trends were that would transform the role of inside counsel in so many companies. Only through a glass darkly did I perceive the outlines of the revolution in which I was fortunate to play a part. Experience, not theory, was my great teacher.

D. THE PRESCRIPTIVE PERSPECTIVE

Although this book is about the General Counsel and inside lawyers, it is rooted in the framing prescriptive concept that the ultimate mission of corporations, especially global companies, should be the fusion of high performance with high integrity and sound risk management. I ask the reader not to move too quickly past that phrase—*high performance with high integrity and sound risk management*. It is elemental to a corporation's commercial success and to its standing in society. In my more than 30 years in big institutions, including almost 20 in one of the largest and most complex corporations in the world, I came to understand that the implications of that straightforward phrase were multi-faceted, complex, and, ultimately, profound.

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 upon whom the company's health depends. Such performance entails an essential balance between risk-taking (the creativity and innovation so essential to economic growth) and economic risk management (the financial, commercial, and operational disciplines so essential to the soundness and durability of business institutions). *In my view, it*

means a corporation-specific optimization of the legitimate interests of key stakeholders—shareholders, creditors, employees, customers, suppliers, and communities—over the short, medium, and long term to create value for all, as I discuss in Chapter 8 on governance (pp. 275–315).

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 existing rules, including balanced approaches to public policy and political processes; and employee commitment to *core values* of honesty, candor, fairness, trustworthiness, and reliability. It involves understanding, and mitigating, other types of risk—beyond direct economic risk—that can cause a company catastrophic harm: legal, ethical, reputational, communications, public policy, and country/geopolitical. The core values of the company, as expressed through the core values of its employees, are essential to strong relationships inside and outside the company. These values, in turn, can only exist when the company adheres to the spirit and letter of the formal rules, when it adopts appropriate global ethical standards, and when it makes these precepts operational at all levels of the corporation.

The fusion of high performance with high integrity must, as noted, include sound management of economic and noneconomic risk. When I use the short-hand “performance with integrity” in what follows, the reader should understand that “with sound risk management” is always implied. But, high performance with high integrity and sound risk management is not just about risk mitigation. It is about creating affirmative benefits in the company, in the marketplace, and in the broader global society. Achieving high integrity obviously involves resources and cost. Sometimes, business leaders will face a trade-off between integrity and performance, between ethics and financials. But, the fusion of performance with integrity and sound risk management ultimately creates value in a wide variety of ways: attracting, motivating, and retaining superb talent; increasing productivity; enhancing customer loyalty; mitigating or eliminating far more expensive risks; increasing brand value; allowing premium pricing; creating operational efficiencies; and enhancing reputation with stakeholders both inside and outside the corporation.

Ultimately, I believe, high performance with high integrity and sound risk management creates fundamental trust among shareholders, creditors, employees, recruits, customers, suppliers, regulators, communities, the media, and the general public. This trust is essential to sustaining the corporate power and freedom that drives the economy—trust that has dramatically eroded over the past quarter century due to stark corporate scandals and stunning business failures. Over the past quarter century, many major corporations, especially transnational ones, have increasingly accepted this broad goal of high performance with high integrity. To be sure, each company might formulate those goals with different words. They may implement them with varying degrees of intensity, resources, and rigor. And, these broad goals do not, of course, command assent at the top of all major, global companies, either in word or deed, as reflected in the constant drumbeat of corporate scandal. But, directionally, I believe this is where global corporations are going—and must go.

In my last book, *High Performance with High Integrity* (Harvard Business Press, 2008), I addressed CEOs, who have the fundamental leadership responsibility for melding performance and integrity in a global corporation. I tried, in brief compass, to articulate a view of corporate purpose, explain why it was important, and describe how CEOs could implement it by following certain key principles and practices. In this book, I write primarily for inside lawyers, and those who work with them, to give my views on the critical role that they play as experts, counselors, and leaders in assisting the CEO, and the board of directors, to carry out this fundamental mission of global capitalism. It goes into more detail on how to attain a high performance with high integrity company through exposition of the GC's roles and responsibilities. It is a complementary, but quite different perspective. The book also articulates a capacious vision of lawyering—of the lawyer-statesman—which is far, far broader than what is taught in law school or tested on the bar exam. It is, in my judgment, a vision of the ultimate lawyers' role, as professionals and as citizens, that is suited to the complex, multi-faceted nature of the real problems that real lawyers in real institutions in real time face constantly.

As a lawyer-statesman who has a central role in setting the direction of the high performance with high integrity corporation regarding both opportunities and risks, the GC must navigate complex internal relationships (with business leaders, the board of directors, peer senior officers, the corporate bureaucracy, the legal organization) and challenging external ones (with diverse stakeholders, governments, NGOs, and media in nations and regions across the globe). The position of General Counsel, properly viewed, presents a rich, consequential opportunity to discharge and define what it means to be a great lawyer in the complex setting of the modern corporation—proactively assisting definition and implementation of growth strategies, helping or leading efforts to create an integrity culture, building systems and processes for compliance with law and ethics, addressing other types of economic and noneconomic risk, rebalancing relations with outside counsel, leading a global legal organization (and other corporate functions), solving complex problems across all those domains, and ultimately being both a partner and a guardian in helping define corporate citizenship for the enterprise.

Beyond speaking to current inside counsel in the United States at all levels of corporations, I especially hope this book will be of use to an emerging generation of General Counsels and inside lawyers, both here and across the globe, who seek to define a more central and proactive role inside their business. First and foremost, it is written for that next generation. I also hope that the book will provide an important perspective and framework for many other non-lawyers around the world who are deeply concerned about the role of the corporation in the world economy and the role of law and ethics in the corporation. Although I write from the perspective of a large, global company, *I believe that many of the ideas here are applicable to medium and small enterprises as well if the CEO and board of directors have a performance with integrity vision.* Some companies will have a BMW Series 7 approach; others, who are more resource constrained, will have a MINI Cooper approach. But the prescriptive issues must be faced no matter how large or small the company. Importantly, I hope that CEOs and boards of directors in enterprises of all shapes and sizes in all corners of the globe will engage with my detailed vision because, without

their understanding and support, the practical ideal of the General Counsel as partner and guardian cannot be realized. I wish, too, that the perspectives offered here will interest others concerned with the rise and fall of corporations: lawyers in private law firms, regulators and media, and experts on business and society in academia and in think tanks.

I have a special hope that the framework will also have salience for General Counsel and other lawyers inside a wide variety of public, private, and nonprofit institutions, not just the publicly held global corporation. The independent expertise, judgment, and vision of the lawyer as expert, counselor, and leader should also obtain when inside lawyers work with Presidents, Cabinet Secretaries, Chairs of Congressional Committees, University Presidents, Foundation CEOs, or other leaders in public, private, and nonprofit institutions—and when they occupy comparable positions in nations all across the globe. Finally, at a time when economic issues threaten to obscure the ethical responsibilities of lawyers as professionals and as citizens, I put forward a contemporary vision of the lawyer-statesman ideal and the continuous quest for what is “right” in an attempt to refocus attention on core issues of “ethics” and “service” that have long motivated young people to pursue a life in the law. I try to demonstrate that these remain fundamental concerns even in complex, profit-seeking, global corporations.

The book’s prescriptive perspective, ultimately, is in setting forth a *framework for identifying a set of sequential, interconnected, and first-order issues*, which I believe corporations—and General Counsels and inside lawyers—should address. This framework entails systems and processes to address those issues and, ultimately, to create the vital performance with integrity culture.

But I should also say what this book is not. First, it does not advance a particular political or economic ideology; it is not intended to be either “progressive” or “conservative.” I raise a broad array of issues. I argue strongly for addressing those issues energetically, fairly, candidly, and systematically. I offer my point of view. But many of these issues are “open-textured” and may be answered in different ways by different corporations that identify and weigh “relevant” factors differently. Second, although I will weave into the discussion my direct

personal experience on these issues—and *my mistakes*—this is not a memoir. It is instead a personal vision of the mission of the corporation and the role of the modern General Counsel. Nor does it advance the “GE approach,” as I saw it. GE was unusual, if not *sui generis*, in terms of size, diversity, and global complexity. My observations, which I hope apply broadly to enterprises of all shapes and sizes, are based on research, writing, speaking, teaching, and conversations with many other leaders, not just my own GC experience (important though it was). And, there are certainly ideas offered here that I either had not thought of when I was at GE or, if did, failed to implement completely, if at all. Third, as I will emphasize later, the book does not argue that the General Counsel has a monopoly on shaping the normative positions a corporation takes. To the contrary, while the General Counsel, as lawyer and as citizen, should offer a strong, constructive perspective in high-level discussions and debates, he is a subordinate of the CEO and he operates in a complex web of shared authority with senior corporate staff and operational peers. He is an important voice on performance, integrity, and risk, with a vital, distinct point of view and strong proactive role. But he is one of a limited number of important voices. In corporations those voices also include a CFO-statesman, an HR-Leader-statesman, and a business leader-statesmen. The broad concerns this book addresses should command the attention—stimulate the views—of all the corporation’s senior executives.

Although this book offers a prescriptive framework, it is built on a hard substratum of experience, trying to balance the ideal with the real, the aspirational with the actual. It seeks to discuss the obstacles that can moderate, alter, or defeat the core prescriptions of the General Counsel as lawyer-statesman and partner-guardian in the service of high performance with high integrity global companies. Such constraints include inherent pressures for corruption in capitalism, resource limits or cutbacks inside major corporations, business leader lack of vision, negative attitudes about lawyers and law, dysfunctional corporate culture, barriers in non-U.S. settings, and more limited resources inside medium and small enterprises. It is very possible that the ideals advanced in this book are achievable, but it is by no means certain. As I discuss at the end, the inside counsel revolution will not

be rolled back, but its future growth—its breadth, depth, and rate of increase both in the United States and around the world—is an open question.

E. CORE CONCEPTS AND KEY ISSUES

In the rest of this book, I explore in more detail the role of the General Counsel and inside lawyers through the examination of three core concepts and through a critical assessment of eight core issues.

Building on the fundamental concept of high performance with high integrity, other core concepts are the bedrock of my prescriptive analysis. I hope to advance, in more detail, the *lawyer-statesman ideal* for addressing the “what is right” question in the context of a complex global business enterprise; explain how to resolve the *partner-guardian tension*—the ever-present conflict between helping the business leaders achieve performance goals, but also assuring that the corporation acts with integrity and manages risk; and illuminate the nature of a *performance with integrity culture*, which can withstand the unrelenting pressures, at the core of capitalism, for unethical, illegal, and ill-considered activities.

I then turn to the essential prescriptive approach on eight top-line issues, which are the core priorities of inside counsel: *compliance, ethics, risk and crisis management, governance, citizenship and public policy, the global legal organization, law firms and alternatives, and future possibilities and obstacles*. I do not, however, venture into the specifics of how particular legal domains should apply inside a corporation: for example, antitrust, litigation, mergers and acquisitions (M&A), taxes, trade, intellectual property (IP), labor and employment, environment, health, and safety. To do so would turn this into a multi-volume work.

There is *not* a separate chapter on *globalization* because that perspective is an essential aspect both of the core concepts and the key issues. I discuss the globalization dimension in different contexts throughout the book. Another major theme worth calling out here, but that is woven into all the chapters, is an *emphasis on function not form*. Most of the hard issues in corporations require an interdisciplinary, cross-functional approach. Breaking down the silos—or, to

mix metaphors, making all the staff and business elephants dance together—is vital. And each corporation has its own culture and rhythms. The CEO must make sure that the right people are at the table on decisions and the right people work together on execution—and that the right checks and balances exist alongside the endless drive for productivity and efficiency. But debates about formal titles and organizational boxes—board chair v. lead director, centralized v. decentralized legal organization, reporting relationship of the Chief Compliance Officer—are far less important than addressing the substantive and procedural issues with the right mix of talent, the right level of attention, and the right balance of efficiency/speed and the checks/balances.

There is now an increasing amount of writing—from lengthy academic articles to short, law firm marketing blogs—on inside counsel and their issues. My goal here is not an encyclopedic and exhaustive literature review. Nor is it intended to be a “how to” manual on work-a-day issues. Rather, it is to present my own take on the prescriptive essence and key realities of being a General Counsel: top priority issues, first principles, hard decisions, and inevitable constraints. It is a prescriptive essence that has emerged from the past—from the inside counsel revolution that occurred over little more than a generation. It is a prescriptive essence that I believe will remain valid for a long time into the future, even in an era otherwise characterized by constant change.

It is, in some respects, my last will and testament on the role of General Counsel in the high performance with high integrity corporation—offering views accumulated over nearly three decades with the wish that they will have some benefit, however modest, for those who follow.