

HIGH PERFORMANCE WITH HIGH INTEGRITY: A GC's Memo to the CEO

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Topics to be covered

- **New Demands on In-House Counsel**
- **Ben Heineman**
- **High Performance with High Integrity**
 - a. The Core Ethical Principles**
 - b. The Toughest Ethical Issues**
 - c. Adherence to the Rules of Professional Conduct**

New Demands on In-House Counsel

- In-house legal departments are no longer immune from the financial scalpel of the CFO
- Globalization creates complication and new ethical issues
- Ever more regulation to contend with in the business and workplace environment

New Demands on In-house Counsel

- Need to become project managers
- Need to become process analysts
- Need to become risk managers extraordinaire, i.e. clairvoyant
- Need to become the ethics watchdog
- In multiple jurisdictions!
- With fewer resources!

Where do we turn for a solution?

**Has someone already travelled down this path,
who might be willing to share his experience
and wisdom?**

Answer: Ben W. Heineman Jr.

Who is Ben Heineman and why should we care?

- **Rhodes Scholar**
- **Editor-in-chief Yale Law Journal**
- **Law Clerk to Supreme Court Justice Potter Stewart**
- **Constitutional lawyer**
- **Senior Vice-President and General Counsel of GE (during the rein of “Neutron” Jack Welch)**
- **Senior Fellow at Harvard Law School’s Program on the Legal Profession**
- **Senior Counsel to Wilmer Hale**

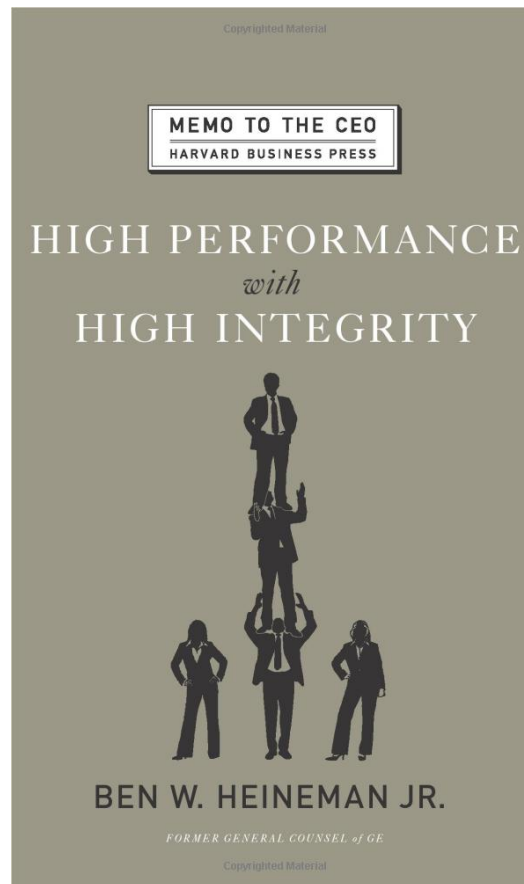
What did Ben Heineman do?

While Distinguished Senior Fellow at Harvard Law School, he wrote one of the first books tailored to the needs of in-house counsel:

Memo to the CEO:

High Performance with High Integrity

Memo to the CEO: High Performance *with* High Integrity



What does High Performance mean?

To Heineman it means:

- Strong, sustained growth of the corporation
- Based on superior products and services
- That provides durable benefits both to shareholders and to other stakeholder

What does High Integrity mean?

To Heineman it means:

- A tenacious adherence on the part of the corporation to the spirit and the letter of the formal rules, financial, legal and ethical
- Voluntary adoption of global ethical standards that bind the company and its employees to act in its enlightened self-interest
- Employee commitment to the core values of honesty, candor, fairness, reliability and trustworthiness

How do you get there?

By creating the right CEO-led corporate culture – which is the shared principles (values, ethics, policies, and attitudes) and the shared practices (norms, systems and processes) that influence how people think, and therefore how they behave.

How does the CEO get there?

By following 8 Core Principles and then instituting practices that are consistent with the implementation of the Core Principles.

So what are the 8 Core Principles?

1. Demonstrate Committed and Consistent Leadership

- a. Leaders must lead
- b. Place integrity and ethical principals first
- c. Seek to go beyond “tone at the top”
- d. Communicate decisions candidly
- e. Senior executives must lead as well as manage

The Core Principles

2. Manage Performance with Integrity as a Business Process, i.e., closely examine your business processes and work with the managers to determine how the decision-making is done, ensure that the processes conform with applicable rules and embed ethical considerations and integrity into the process.

Roundtable Discussion

For the next 5 minutes talk amongst yourselves about examples of how you were able to review a business process and ensure that it conformed with the law and your company's core ethical principles.

Did you encounter any resistance from those in the business sector and how were you able to overcome that resistance?

Someone at each table please keep notes so that we can share best practices

The Core Principles

3. Adopt Global Ethical Standards

a. Identify the issues

b. Assess risk/reward in a societal context

c. Make key decisions at the highest level so as to get the broadest buy-in

d. Consider Rule 4.06 of the Rules of Professional Conduct and encourage public respect for the administration of justice

The Core Principles

4. Use Early-Warning Systems to Stay Ahead of Global Trends and Expectations

- a. Monitor financial and legal rules
- b. Assess emerging demands for ethical corporate action
- c. Address ethical and reputational risks in developing countries

The Core Principles

5. Encourage the CFO and GC to be Both Partners and Guardians

- a. Encourage collaboration between finance, legal and HR
- b. Acknowledge natural stress points between these three groups
- c. Promote trust and improve the chemistry between the CEO, CFO, GC and HR Head
- d. Consider Rule 5 of the Rules of Professional Conduct and supervise non-lawyers to whom tasks are assigned

Roundtable Discussion 2

Take five minutes at your table to discuss techniques that you were able to use to promote collaboration with people in your Financial and/or HR departments. How were you able to achieve buy-in?

Someone keep notes to share best examples.

The Core Principles

6. Foster Employee Awareness, Knowledge and Commitment

- a. Articulate what people should do
- b. Deliver it so that everyone knows what it is
- c. Address cultural differences head-on
- d. Design special leadership education and training

The Core Principles

7. Give Employees Voice

- a. The Ombudsperson system
- b. Bottom-up reviews
- c. An elite corporate audit staff
- d. Ensure a strong “dotted line” allowing reporting directly to the GC and the CFO
- e. Consider Rule 6.01 of the Rules of Professional Conduct and encourage your company to report dishonest conduct

The Core Principles

8. Pay for Performance with Integrity

- a. Use annual goals and objectives – and evaluations
- b. Assess the leader's own program
- c. Use comparative assessments
- d. Make integrity a clear factor in compensation and promotion

Roundtable Discussion 3

Take 5 Minutes at your table to discuss:

What have been your most difficult problems?

**Have you ever been asked to make business decisions,
and, if so, did this interfere with your role as counsel?**

Someone keep notes to share best examples.

Difficult Problems

Allowing yourself to wear 2 hats:

- 1. In what capacity did you make a decision, as a legal counsel or as a manager?**
- 2. What impact might this have on the protection of privilege?**
- 3. Consider Rule 6.04 of the Rules of Professional Conduct and don't allow your other role to impair the exercise of your judgment as counsel to your company**

The Toughest Issues

Emerging Markets:

- a. Build a uniform global culture
- b. Spotlight the endemic problems:
 - i. Improper payments;
 - ii. Remote sites; and
 - iii. Sourcing in the global supply chain.
- c. Insist on good people and good training

The Toughest Issues

Acquisitions:

- a. Create a robust process
- b. Prevent future integrity problems
- c. Uncover and address past problems

The Toughest Problems

Reputation:

- a. Keep commitments
- b. Anticipate the issues
- c. Generate a substantive citizenship report

The Toughest Problems

Crisis Management

- a. “It is our problem from the instant we hear it”
- b. Follow the facts
- c. Have an experienced PR team available on call
- d. Consider your obligations under Rule 6.06 of the Rules of Professional conduct in respect of your obligations when you communicate with the media

Questions?

Any final questions?

Where can I get Ben Heineman's Book?

On Amazon: www.amazon.ca