

CORPORATE BOARD MEMBER®

Let Us Now Praise Great GCs

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By Randy Myers

The directors of Tenet Healthcare Corp. were spending increasingly less time on what was happening in the company's hospitals and other facilities and increasingly more on what was happening in courtrooms. Pounded by lawsuits alleging that Tenet had been padding the bills of Medicare patients and exploiting loopholes in the Medicaid program, the company knew its very existence was in doubt. "These were survival issues," says outside chairman Edward A. Kangas, 64, the former chairman and CEO of Deloitte Touche Tohmatsu who joined the Tenet board during that troubled year of 2003. "There were many people who didn't believe Tenet would survive."

It did, but only after paying more than \$1 billion to settle multiple private and government claims against it. And while credit for the resuscitation rightly belongs to a host of executives brought in to turn the company around, Kangas reserves special praise for one man: Tenet general counsel and secretary E. Peter Urbanowicz, who took over as chief legal officer in 2003 after a two-year stint as deputy general counsel of the U.S. Department of Health and Human Services. Working with outside counsel, state agencies, the Justice Department, the federal Medicare program, Tenet managers, and the Tenet board, Urbanowicz toiled through the company's legal woes step by step, Kangas says, and proved especially valuable in dealing with federal prosecutors.

"Peter was able to work with our outside counsel to help the Justice Department understand that Tenet was willing to pay all it could to settle their lawsuits—but within its ability to pay," says Kangas. "He didn't offer ultimatums; he just helped people get to the right decision. It was like watching a surgeon with a very sharp scalpel. He knew what had to be done, but rather than just tell us, he helped us discover it on our own and arrive at the right answer."

Even the best lawyers don't always have what it takes to be a great general counsel. As a baseline, they need the attributes shared by all top attorneys—an analytical and creative legal mind, sound judgment, intellectual curiosity, and the ability to look two or three steps ahead of the current issue or problem. But those who excel in the role of chief corporate legal officer also need a deep understanding of their employer's business, stellar interpersonal and leadership

skills, an appreciation of the global regulatory and legal environment, and a knack for synthesizing complex issues into manageable bits of information that allow business leaders and board members to act with confidence on their advice—all without dumbing down the information. (See the following story for five GCs who do all this.) “Too often staff people will give one point of view and force the board to cross-examine them to get another point of view,” says former General Electric Co. senior vice president and general counsel Ben W. Heineman Jr. “For the board, you have to explain what the options were, why the decision was hard, and where the real trade-offs were.” Heineman, now a distinguished senior fellow at Harvard Law School’s Program on the Legal Profession and senior counsel with the law firm of Wilmer Cutler Pickering Hale & Dorr LLP in Washington, D.C., is the winner of Corporate Board Member’s Lifetime Achievement Award. The honor, the first the magazine has conferred, recognizes Heineman’s contributions to good governance practices at GE, something he initiated long before they became a common buzzword.

Perhaps most important, a great general counsel needs the tact and courage to reconcile what Heineman has called “the dual and at times contradictory roles of being both a partner to the business leaders and a guardian of the corporation’s integrity and reputation.” The challenge of that task lies in the many different parties the GC is asked to serve and shepherd. While he or she reports to the chief executive officer and effectively serves at the CEO’s pleasure, the general counsel is also viewed by most directors as their front-line legal adviser. Ambitious business managers will sometimes see the GC as an obstacle to be overcome—a naysayer who would limit their freedom to conduct business expeditiously. All the while, the GC’s ultimate responsibility is to the corporation itself, notes Heineman. “It’s not a good sign when the general counsel is asked a question at the board meeting and has to look at the CEO before he answers.”

Adds Justus O’Brien, head of the legal practice at Egon Zehnder International, an executive recruiting firm: “A great general counsel has to know how to disagree without being disagreeable.” Indeed, walking that fine line on behalf of multiple constituencies “is easy to talk about but very difficult to do,” says former PepsiCo Inc. chairman and CEO Steven S. Reinemund, 60, now a director of American Express Co., Exxon Mobil Corp., Johnson & Johnson, and Marriott International Inc. “It takes a very mature executive to understand how to execute that.”

Maturity, and the respect of the board and management team. “The general counsel needs the confidence of the CEO and the board, and that confidence is earned by the judgments he or she makes,” says retired vice admiral John R. Ryan, 62, a director of cable-TV operator Cablevision Systems Corp. and finance company CIT Group. “It’s something you earn by rising to the occasion.” That is unlikely to happen, Heineman adds, unless the GC has mastered the intricacies of the company’s business along with its legal and regulatory milieu. “It’s much easier to be a good guardian if you’ve built up credibility being a good partner,”

he says. “By that I mean you’ve helped the CEO and top leaders solve business problems.”

Not all general counsels, even great ones, can be expected to know your business the day they arrive on the job. But they can ease the transition— win themselves a honeymoon of sorts, Reinemund says—if they bring skills or expertise the executive team doesn’t already have. When Reinemund hired Larry Thompson to be general counsel of PepsiCo in 2004, for example, Thompson’s résumé included a tour as deputy attorney general in the U.S. Department of Justice and as head of the government’s Corporate Fraud Task Force. He hadn’t worked at a consumer-products company, says Reinemund, but brought to PepsiCo a deeper knowledge of public policy and more insight into the workings of the federal government than any other executive. Those were two attributes the CEO wanted in a general counsel.

Reinemund theorizes that law follows social direction, and a GC versed in public policy does a better job of ensuring that the company will act in a way consistent with where policy is heading, not just where the law is today. “Larry never represented himself as already knowing our business or having the answers to the day-to-day issues of the company,” says Reinemund. “But he quickly gained the respect of the people around him by raising their understanding of the external environment in which we were operating.”

What Thompson also brought to the job, Reinemund says, was “impeccable integrity.” In addition to overseeing the prosecution of several Enron Corp. officials, Thompson had been the author of a 2003 internal Justice Department document that came to be known as the Thompson Memorandum. The memorandum made it tougher for corporations to avoid criminal charges when accused of wrongdoing. “He is one of those very special people who have the ability to know, from their own moral compass, what is the right thing to do,” says Reinemund. That integrity was evidenced in 2006, he adds, when an employee of Coca-Cola Co. sent a letter to PepsiCo offering to sell Coke trade secrets. Thompson immediately forwarded the letter to Coke. Reinemund didn’t know the general counsel had done that until Coke CEO E. Neville Isdell called to say thank you for the way PepsiCo had handled the incident. “It was a small thing, ultimately,” Reinemund says, “but the way Larry did it, very discreetly, set a cultural tone that made people proud to be associated with our company.”

Egon Zehnder’s Justus O’Brien says that’s the kind of character companies want in a GC, and cites as another example former deputy attorney general James B. Comey, now the top legal officer for defense contractor Lockheed Martin Corp. When then-attorney general John Ashcroft was hospitalized in 2004, Comey, as acting attorney general, stood up to pressure from White House chief of staff Andrew H. Card Jr. and White House counsel Alberto R. Gonzales by refusing to certify the legality of central aspects of a National Security Agency domestic surveillance program. “Comey is a dyed-in-the-wool Republican but had the

backbone to stand up to these guys and not be strong-armed,” O’Brien says. “No one will ever doubt that if something in a gray area comes up at Lockheed Martin, he will be able to see the issues clearly, lay out the options—the pluses and the minuses—and take a stand.”

Yet great general counsels cannot just be policemen. “They need to be able to say, ‘No, you can’t do that,’ but only when necessary,” says Karen Dewis, a partner with the McDermott Will & Emery LLP law firm in Washington, D.C. “Because they also need to be able to look at a problem in terms of what can be done. Maybe the exact objective can’t be accomplished in exactly the way it was presented, but knowing how else you can get there is very important.”

Jeffrey M. Peek, 61, chairman and CEO of CIT Group, says that’s one of the qualities he admires in Robert J. Ingato, the company’s executive vice president, general counsel, and secretary. “From time to time stuff lands on his desk that could have been done a different way, but the business is already headed down that path and it becomes Bob’s job to make a silk purse out of a sow’s ear,” says Peek. “We rely quite a bit on Bob to tell us how we should get stuff done.”

CIT is one of Karen Dewis’s clients. She says that Ingato “has the ability to synthesize incredible amounts of complex information and focus on what’s important and only on what’s important. He’s able to predict various outcomes and what they mean, to articulate the real question and the real issue or the real problem and devise a commercially practical solution. He’s also unflappable; there’s no amount of stress or interpersonal dynamic he can’t handle.”

“I don’t expect Bob to be all things to all people—I still expect to pay outside legal fees,” says Peek. “But I do look to him to manage the process in terms of how we accomplish things. In that sense, he’s probably more of a business partner. He is involved in most of the major things we do, and his real estate has grown so that he’s not just advising us purely from a legal perspective but on general business practices—should we do this deal, should we not, what are the risks, those types of things. I think that’s probably a prototype not just for a general counsel but for all in-house attorneys.”

Peek’s observation points up how the role of GC has changed in the past decade. “The biggest change of all,” O’Brien says, “is that the general counsel is now more fully integrated into the business.” Says Heineman: “When I started, most inside lawyers were Rolodex lawyers, lifers who had just risen to the top and always had to call outside. Today that’s radically changed. The general quality of the general counsel has been dramatically upgraded.”

The GC’s job “is no longer just about interpreting what the law says and how it applies to your company,” O’Brien says. “It’s also about establishing the global values and standards for the company and helping to convey them to the public.”

“The world that Jack Welch faced in the mid- to late '90s and the world that Jeffrey Immelt faces are very different,” says Heineman, speaking of GE’s former and current chairmen. “The mid-'90s were boom times, CEOs were heroes, and capitalism was great. Today CEOs have to spend more time worrying about regulatory enforcement, watchdog groups, the constant attention of the media, and the catastrophic consequences of integrity failures. And that,” he says, “means that the role of the general counsel, broadly defined, is more important than ever.” Case closed.