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On Board: The General Counsel's Relationship With 'C-Suite Evangelists'

Greater executive level awareness of the general counsel's responsibilities may reduce the risk that self-styled executive "evangelists" will "go public" with concerns on corporate conduct or priorities.

Michael W. Peregrine

The New York Times recently published two stories, in rapid succession, that focused on allegations that the Facebook Chief Information Security Officer (CISO) had strongly disagreed with management's approach to investigating and disclosing third-party harvesting concerns.

Indeed, one of the two *Times* stories was entitled "The End for Facebook's Security Evangelist". It was a presumably flattering summary of the CISO's tendency to aggressively pursue privacy concerns, often at the risk of creating friction with other senior corporate executives. A related *Times* article focused on allegations that the Facebook legal and security functions were at odds on privacy security matters. It quoted a former Facebook privacy executive to the effect that "[T]he people whose job is to protect the user always are fighting an uphill battle against the people whose job is to make money for the company."

Greater executive level awareness of the general counsel's responsibilities may reduce the risk that self-styled executive "evangelists" will "go public" with concerns on corporate conduct or priorities. That's always a



recipe for organizational trouble. But to the extent such "evangelists" come to appreciate the general counsel's role as a "guardian of the corporate reputation" they may be more willing to turn to her first to resolve their concerns.

The concern is not simply with legal/compliance issues—those invoke (hopefully) established and well-promoted processes (e.g., the compliance hotline). The more specific concern is with internal matters that could affect corporate reputation, and the public/regulatory perception of organizational culture.

Without knowledge of an internal "C-Suite" outlet for their concerns, some more socially conscious officers may feel compelled to share their concerns in a public milieu.

That's one of the more nuanced lessons from the media's "behind the scenes" coverage of executive level controversy within Facebook, as its privacy concerns developed and the "data harvesting" controversy broke. The not-too-subtle inference was that in terms of privacy security, the CISO was "wearing the white hat" and the general counsel's office was "wearing the black hat," that the

Facebook legal team was more concerned with supporting the business perspectives of their executive leadership, at the user's expense.

But a more nuanced inference may be that the “evangelist” CISO—and/or whomever else provided the background for the story—didn’t understand the role of the general counsel. They probably had no idea that she’s not just a technical legal advisor, but also an ethics counselor and a business partner to management. That she’s 100 percent invested in the corporate reputation. This is, of course, the widely accepted view, first espoused by the estimable Ben W. Heineman Jr. Had the actions of the legal team been viewed through that lens, its actions might have been better understood, and the inferences as to the legal team’s role less critical.

The Facebook crisis points to the need for all members of the executive suite to have a fundamental awareness of the roles and responsibilities of the general counsel. This is particularly the case given the emergence and authority of new, non-traditional executive officer positions that may be filled by individuals unfamiliar with the general counsel’s broad role. Titles such as “chief innovation officer” and “chief automation officer” reflect this trend. And there are others such as the “chief ecosystem officer” and the “chief freelance relationships officer.”

Many of these newly styled officers may be generally unfamiliar with executive suite protocol, the roles and duties of the various officers, and in particular unaware of the expansive role of the general

counsel. They may not fully appreciate how their duties implicate legal issues that are under the jurisdiction of the general counsel. Beyond that, they may not realize that in many respects, the general counsel is the “go-to” person for their cultural and ethical worries and concerns.

More than just a “failure to communicate” about job responsibilities, it’s a missed opportunity, if not an active risk. For legal, ethical, compliance and cultural reasons, executive leaders of all stripes should have some basic familiarity with the scope of the general counsel’s role and professional obligations. And they might be very surprised with (and comforted by) what they find out.

To experts such as Mr. Heineman Jr. and Judge E. Norman Veasey, the “wise counselor” role takes the general counsel beyond the basic “is it legal?,” “is it right?” and “what should we do?” questions, to consider reputational, moral and ethical factors, among several others. In this capacity, the general counsel is regularly called upon to “walk the balance beam” of being both a partner to the business leaders and the ultimate guardian of the corporation’s integrity. How many other members of the executive team appreciate that reality?

The ultimate Facebook takeaway for any general counsel—regardless of industry sector—may be to make sure her executive suite colleagues understand “what her job is.” Put them in a position to recognize what “hat” the general counsel is wearing at a particular time—that of technical legal advisor, business partner to management or wise

counselor—and its related implications. Because no matter what “hat” she is wearing, it presumes a specific role that is grounded in her professional responsibilities and supported by the weight of forceful commentary. The Board Chair and the CEO can provide valuable support to such an educational effort.

So the message for C-Suite policy, social and ethical “evangelists” is clear: proselytize all you want about misplaced priorities, but remember that there is an internal outlet for your concerns. And that’s the general counsel, whose duties include protecting the reputation of the organization. And when you think about it that way, the general counsel may be the “ultimate” corporate evangelist—and by job description!

Michael W. Peregrine, a partner at McDermott Will & Emery, advises corporations, officers and directors on matters relating to corporate governance, fiduciary duties, and officer-director liability.