



DIRECTORS
ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Michael Solender

Global Vice Chairman & General Counsel of EY
(Formerly Ernst & Young)



THE SPEAKERS



Michael S. Solender
Global Vice Chair and General Counsel, EY



Prof. Harold Hongju Koh
Sterling Professor of International Law; formerly Dean, Yale Law School, and Legal Adviser of the U.S. Department of State



Ben W. Heineman, Jr.
Former Senior Vice President and General Counsel, General Electric Company; Senior Fellow at Harvard's Law and Government Schools



Eric R. Dinallo
Partner, Debevoise & Plimpton LLP; former New York State Superintendent of Insurance



Michèle O. Penzer
Managing Partner (New York), Latham & Watkins LLP



Robert B. Barnett
Partner & Senior Member, Executive Committee, Williams & Connolly LLP, and counsel to presidents, prime ministers, and national and international corporations and business, media, and political leaders

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, www.directorsroundtable.com.)

TO THE READER

General Counsel are increasingly leaders in the legal and business community, and in broader society. Boards of Directors look to them to offer leadership on a host of issues within a business. In recognition of our distinguished guest of honor's personal accomplishments and of his leadership in the profession, we are honoring Michael Solender, Vice Chair and General Counsel of EY, with the leading global honor for General Counsel. The panel discussion he led addressed "Counsel as Citizen and Business Advisor." Is the lawyer's identity defined by her client? Can she serve her clients and the public? Can she be the "wise" advisor to business, government, and civic leaders? The program also addressed the importance of diversity and legal education to the discussion of a lawyer's citizenship.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for directors and their advisors, including General Counsel.

Jack Friedman
 Directors Roundtable Chairman & Moderator



Michael S. Solender
*Global Vice Chair and
 General Counsel, EY*



Michael Solender is the Global Vice Chair and General Counsel of EY (formerly Ernst & Young) – the Big Four accounting and professional services organization with 200,000 personnel in 150 countries. In that role, he oversees the organization's more than 300 legal personnel in 46 countries. He also serves as legal advisor to the senior leadership of the organization and its Global Executive. From 2009 to 2013, he was the Americas Vice Chair and General Counsel for EY.

Since 2008, he has also been a Visiting Lecturer at Yale Law School, where he has taught several courses. He also taught at Harvard Law School as a Distinguished Visitor from Practice from 2012 to 2014.

Before joining Ernst & Young (from 2004–08), Mr. Solender was the General Counsel of The Bear Stearns Companies Inc., the global financial services firm, where he supervised the Legal and Compliance Department around the world and was advisor to senior management and the board of directors. In 2007–08, he chaired the General Counsels Committee of the Securities Industry and Financial Markets Association's (SIFMA).

In 2000–01, Mr. Solender was the General Counsel of the U.S. Consumer Product Safety Commission (CPSC) – the federal government agency charged with protecting the public from dangerous consumer products – where he received the Chairman's Award for distinguished service and participated in a number of matters that received national attention. From

1991–2000, Mr. Solender was a partner and an associate at the Washington, D.C.-based law firm of Arnold & Porter, specializing in litigation and regulatory matters.

In 1989–90, Mr. Solender was a law clerk to Judge Leonard B. Sand of the U.S. District Court for the Southern District of New York. He graduated in 1989 from Yale Law School, where he was a Senior Editor of the Yale Law Journal, and in 1986 from Columbia University, from which he received a B.A. *summa cum laude* and was elected to Phi Beta Kappa. He attended Oxford University (Lady Margaret Hall) in 1984–85.

Mr. Solender serves on the Advisory Committee of the Yale Law School Center for the Study of Corporate Law and the Lincoln Center for the Performing Arts' Counsel's Council. He is President-elect and a member of the Executive Committee of the New York American Inn of Court. He served on the Board of Visitors of Columbia College from 2007–13, the Columbia Undergraduate Campaign Council from 2011–14, the Board of Directors of the Lawyer's Alliance for New York from 2004–08, and the Executive Committee of the Yale Law School Association from 2006–10. He was a 2014 recipient of Columbia University's John Jay Award, the 2012 recipient of the Brennan Center for Justice's Legacy Award, the 2007 recipient of the UJA-Federation of New York's Stephen E. Banner Award, the 2005 recipient of the Urban Justice Center's Community Service Award, and the 2005 recipient of the annual Boy Scouts of America honor.

EY

EY is a global leader in assurance, tax, transaction, and advisory services. We serve more than 200,000 clients globally, across all industries, from entrepreneurs to many of the world's largest multinational corporations – including 390 of the Fortune Global 500.

We have 212,000 people working in more than 150 countries, and are frequently recognized for our strong commitment to our people. Most recently we have been named as one of the 25 World's Best Multinational Workplaces by the Great Place to Work Institute.

At EY, our purpose – building a better working world – runs through everything

we do. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients, and for our communities.

JACK FRIEDMAN: I'm Jack Friedman, Chairman of the Directors Roundtable. We are pleased to have you here today. The purpose of the Roundtable is to organize the finest programming on a global basis for Boards of Directors and their advisors.

This program will be followed by a full-color transcript, which will be made available globally to 150,000 people beyond the audience here today.

Our Guest of Honor, Michael Solender, will lead the discussion on important topics for General Counsel and lawyers. We are appreciative that these issues will be addressed by this Distinguished Panel.

Michael is a graduate of Yale Law School and has served in government, law firms, and corporate practice. He is currently the Global Vice Chair and General Counsel at EY. His vision and experience are extraordinary.

I received a letter of congratulations for Michael from Professor Robert Post, who is the Dean of the Yale Law School. At this time, I would like to read his letter, which will be included in the transcript, and I will present a copy to Michael after the program.

"Dear Michael:

"I am absolutely thrilled that you are receiving the World Recognition of Distinguished Counsel from the Directors Roundtable. You have earned this prestigious award many times over. You were a successful General Counsel at the Consumer Products Safety Commission and other places, and now at Ernst & Young. You are wise, trustworthy, and visionary. You are thoughtful, constructive, and in all things display the utmost integrity."

"My respect for your skills and acumen, and my admiration for your personal attributes, led me several years ago to invite you to co-teach a class at Yale Law School on the challenges and responsibilities of being a General Counsel. Since that time, you have taught the class many times,



and each year, students have benefited from your commanding knowledge and comprehensive experience. If asked, I am certain you will insist that *you* have benefited from the class, that your teaching has made you a better General Counsel. You've reported that you once even cited a case from class during a board meeting. But to me, this just exemplifies your remarkable humility. Prepossessing and resourceful, you are impossible not to admire as a professional and as a person. I am honored to know you, and I can say, with certitude, that no one is more deserving of this award. The entire Yale Law School community and I offer you our congratulations."

[APPLAUSE]

MICHAEL S. SOLENDER: Good morning, everybody. Thank you *very* much for coming. That is the end of the discussion about me. I'm going to have an opportunity in a moment to introduce this extraordinary panel.

I have to say, I have been very excited about this, and I was joking with Jack that when he first asked me if I was interested in this — I've done a few of these over the years — and I said, "Listen, you get a panel together with Heineman, Koh, Dinallo, and Barnett, and I'll do this." I figured that was the end of it — I wouldn't hear anything from him. He called back and said, "Did it." Only in a

dream do you think of a panel like this and being able to participate as I am. So, that's how this came about.

I think it truly can be said that we have the giants of our profession here, as well as my mentors. It's very, very exciting to me to be able to moderate this.

Let me introduce the panel, and then we'll get to the subject matter. I'll start on my right here with Ben Heineman. Ben was a Rhodes Scholar, editor-in-chief of the *Yale Law Journal*, a law clerk to Justice Potter Stewart, Assistant Secretary of Health, Education & Welfare, Managing Partner at Sidley & Austin D.C.; and then he assumed the job which made him a legend, and also created, for all intents and purposes, the position or type of position throughout the corporate world that I now hold — we owe it to him for setting that path and standard that we have all aspired to: he became the Senior VP and General Counsel to GE, where he served from 1987 to 2004 — and, as I said, was a trailblazer and set a standard to which we all aspire. The last thing I'll mention about Ben is that I've had the privilege for the last six years of teaching with him, at both Harvard and Yale Schools. As you heard in a letter from Dean Post, that has been one of the most exciting things for me. I'll say the opportunity to teach with Ben made that particularly special. I've always said — and



some of you have probably heard me say this – I am confident I learned much more than the students did as a result of being able to co-teach with him. So I’m delighted Ben could join us here today.

I’ll turn next to Harold Koh on my left. Harold was a Marshall Scholar. He graduated from Harvard Law School. He clerked for Justice Blackmun, and then joined Covington & Burling for a couple of years. He then arrived at the institution that would make him a legend, and of which you’re going to hear a fair amount today – Yale Law School. He quickly became one of the most popular, respected, and capable teachers at that school, and we were joking before – he was my teacher. I won’t state the date, because neither of us like to think about that, but he was, in fact, an inspiring teacher. Just to be a little more specific about that, the course I took with Harold was on international business transactions. You might note, just from my title, that that is something that has come in very, very useful to me, and I remember more of that class than Harold would believe if we talked about it. It’s been an extraordinary contribution to my career.

He then became Dean in 2004, and in fact recruited me, during his deanship, to teaching – that’s where my teaching career was launched. I’ll always be grateful for that. Harold has had some extraordinary public service, as well, in which he really distinguished himself. Many of you probably know what his contribution was, but he served in the Clinton administration as Assistant Secretary for Human Rights in the State Department. Then in the Obama administration, he became the Legal Adviser to State, where he dealt with some of those complicated, challenging, and important issues of national security and international law that the country confronts, and did a wonderful job with it. He’s returned to Yale, where he continues to be revered.

I’ll turn to Bob Barnett next, who’s on my far left here. Bob is a graduate of the University of Chicago Law School. He clerked for Justice Byron White. He began

“Only in a dream do you think of a panel like this and being able to participate as I am.”
– Michael Solender

as a Legislative Assistant to Senator Walter Mondale. Then he joined the firm where he would become a legend, Williams & Connolly, in 1975. There is so much you can say about Bob; I had to pick out a few things here, because his résumé is so fascinating. I’ll start with one that jumps out at everybody: he has represented, as a lawyer and as an agent, the last three Presidents of the United States, as well as virtually all the network news anchors for the last two decades. His clients include Tony Blair, Benazir Bhutto – and I could go on – but it’s an extraordinary list that, frankly, no lawyer anywhere in the world has anything comparable. He’s been described in the media as Washington’s indispensable man. I’ve seen that in action. He is, indeed, that.

Somewhere along the way – I think it was about 15 years ago – Bob generously took me under his wing and my son, incidentally, and he and Bob have become very close – and has been a tremendous mentor for me for many years. I’m very grateful for all the contributions he’s made to me over the years.

I’ll turn next to Eric, who is on my far right here. Eric is a graduate of NYU Law, and thank God somebody here besides me didn’t clerk on the Supreme Court! He went to Paul, Weiss. Indeed, we think it’s very possible that we met for the first time at Paul, Weiss; we were both summer associates – and I won’t give that date, either! It was a while ago.

He went to work at the DA’s office, where he quickly became one of the most respected prosecutors in the city. We were very friendly and respectful adversaries at the DA in the first of what we’ve since talked about and identified as a long line of high-profile law enforcement investigations. It’s fair to say we were there at the creation, Eric and I, together. That wasn’t the only one. He then went on to become the Chief of the

Securities Bureau at the Office of the New York Attorney General, Eliot Spitzer. There he took a very high-profile role as essentially the Chief Prosecutor in the Securities area. We again were respectful and friendly adversaries as those investigations got into high gear and were really historic. We both participated – Eric in a particularly visible and important way – during those.

He became head of Regulatory at Morgan Stanley, moving into the corporate world, and then the General Counsel of the Willis Group. He went back into government and served as the Superintendent of Insurance for the State of New York, which was during the high point of the financial crisis. He played a very significant and important role in some key parts of that crisis, and you can read about those in books now.

Eric became a candidate for the New York Attorney General’s Office and ran a noble and very interesting, but ultimately unsuccessful, campaign. [LAUGHTER] But entered that very difficult arena and came out with everything intact and everyone still holding him in great regard. He’s now a Partner at Debevoise, and remains a very, very good friend.

Michèle Penzer also studied at Yale Law School. You’re beginning to see a little bit of a theme here developing. Michèle joined Latham & Watkins and has had a meteoric rise in that firm. She is the Managing Partner of the New York office, and has served as Co-Chair of Latham’s Banking practice, and as the first female member of the firm’s Executive Committee; Chambers recognizes her as one of the leading attorneys in her field in the country. She comes from a firm, Latham, with which I have had a very long history, and which I hold in exceptionally high regard and have many friends. Thank you, Michèle, for participating today.

Let me now turn to our subject today. I wanted to make sure we got this absolutely right, because you only get to assemble a panel like this once every decade or so. I wanted to make sure we had an interesting subject. Here's what I'm proposing we're going to talk about, and it will be an interesting discussion. Counsel as citizen and business advisor: Do we still have lawyer-statesmen, lawyer-stateswomen today in the profession? Perhaps my question is answered before we even start just by the identity of the panel – but I thought this would be the panel with which to explore that.

A word just about the format: We're going to use the Bob Barnett moderating technique here, which is that it will be active questioning, not a lot of long speeches, and we will involve you in the audience. Please think of your questions so we can do that as we go through.

Let's launch this. Ben has coined a term that we've used often and it's become standard in our profession, which is the "lawyer-statesperson." It's used, and Ben has used it, in the context of the General Counsel, describing what he envisions and what he expects of all of us. Being a multi-dimensional lawyer – somebody with skills as a lawyer; somebody with integrity; somebody who can be in a public profile – and give the difficult advice and the difficult answers to questions in the context where it's most challenging to do so. Being the person who is the ethical compass of the corporation as well as the person who helps to facilitate the business and balancing both of those objectives.

I want to broaden that out a little bit today and talk about more than just General Counsel, because Ben and I, perhaps, have exhausted that subject at several law schools. I want to talk about how lawyers can transcend that role; how you can become more than just what your career is and become that lawyer-statesperson, with a broader definition. That is somebody who's not just a lawyer, but a citizen; somebody who's



contributing to society in multiple dimensions. We'll talk about, with this panel, how you get there.

Let me start with what I think is an important question – because this is, indeed, one of the challenges that many of us in the profession are facing today: we represent clients; that is the nature of the legal profession. We have to take views; we take positions; as advocates, as peoples' advisors. There has been a profound change in recent years, which is that, increasingly, we've become defined by who our clients are; defined by the positions we're taking.

I want to start with Ben on this question. We'll begin in the in-house area and then broaden it out. Ben, the question is, "Does who your client is define who you are?" For example, when you were at GE for those many years, representing one of the most prominent and important companies in this country, was that your identity? Was that how you were defined? Or were you able to achieve a broader identity in that position?

BEN W. HEINEMAN, JR.: The answer is, actually, yes. Let me just define, very quickly, what I mean by "lawyer-statesman." It's pretty simple. The first question is, "Is it legal?" And the last question, "Is it right?" Your job inside the corporation is to ask that "Is it right?" question insistently and to move

way beyond legal issues to all the political, economic, and social impacts of what the corporation is doing. There are basically three roles for a lawyer: expert, counselor and leader. In basically asking that, "Is it right?" question as a lawyer-statesman, you are acting in all three roles. But I don't think there's any question; unlike a lawyer in a law firm, you are part of the company, your identity is being of senior management, just as Harold was part of the Administration and part of the State Department.

As General Counsel, you clearly operate in a very fragmented world, a matrix world, where you are one voice. You are a voice of conscience. But, you are not the only voice. You do have to take responsibility for the ultimate decisions made inside the company and be identified with them unless and until the company crosses certain lines. Obviously, if corporate actions are highly illegal or are highly unethical, you have to resign, you have to leave. But as long as you are part of management as a General Counsel, you are – and should be – identified as a GE person, a person identified with the corporation. Indeed, just to make it very personal, when people asked whether I wanted to be considered for a position in government, I wasn't sure that I wanted to have confirmation hearings where I would have to defend all acts of the corporation, even ones I didn't agree with but were not reasons for resignation. I would have to defend it because I was part of management. I operated as a businessperson, not just as a lawyer; I was involved in all the major decisions.

So, the answer is "yes" about having a corporate identity as a General Counsel. Do I also act as a citizen? Do I do things in my community, in my church and civic organizations? Of course I do. Hopefully you do things that are outside of the organization. Basically, unlike a law firm lawyer, if you are inside a corporation, you are very much identified with that organization, and need to be, because one of the most important things about being a General Counsel is not just being the lawyer



with the client, but being part of top management. One of the changes in these jobs is that you are now integrated into the very top management of the company, and therefore participate, but you have to take responsibility, unless you want to resign.

MICHAEL S. SOLENDER: Let me follow up quickly, because I think you're on the point that I wanted to emphasize here. But here's the question: Does the full rap sheet of GE — good and bad — and you don't know where the focus is going to be, if it's the media or the government — is that now your résumé? Do you own all that?

BEN W. HEINEMAN, JR.: I own it in the sense that if there were a scandal — there was a famous procurement scandal where people in GE embezzled money from the U.S. government, which funded sales of GE aircraft engines to Israel — my job was to fix that. I don't take responsibility for a number of lawyers down in a global company who did it and went to jail, but I took responsibility for how the organization responds, what kind of investigation and discipline, what kind of improved compliance systems and other kind of remediation; all these things — of course, that is my responsibility. Do I take responsibility for the bad act? No. But if there was a bad culture over time, then it's my responsibility.

Just to throw a little grenade down the aisle here — in some of the financial service organizations, which have had massive and continuing problems in all sorts of areas, the General Counsel and the CEO, even if they're good people, have some responsibility for that. So a very hard question is when there are bad acts down in a corporate organization how much responsibility should those high up in the organization bear.

It's a question of the culture that you create and the kind of compliance with law, the kinds of ethics you've got, the kinds of citizenship you have; it's the totality — it's not a particular act, but it's how you respond to particular acts and the culture you help create to prevent bad acts, absolutely.

MICHAEL S. SOLENDER: We will soon be turning this into a confessional as we go here!

Harold, you worked for State and before that, you were a global leader for human rights. Ben got to the question that I wanted to pose for you first: In government, if you have to take a position on a controversial subject, you're going to have to take it one way or the other. Does that define you; are you defined by that position? Or is that the Administration's position, or is

it some combination? How does that ultimately work? What ownership is there of these positions?

PROF. HAROLD HONGJU KOH: I agree with what Ben said. Let me say, first of all, that Mike Solender is my best student ever!

MICHAEL S. SOLENDER: That is hyperbole! [LAUGHTER]

PROF. HAROLD HONGJU KOH: Be like Mike! The only correction I'd make to Dean Robert Post's letter is he didn't say that Mike was unusual because he once cited a case from class in a board meeting. He said Mike was unusual at Yale Law School because he once cited a case in class!

MICHAEL S. SOLENDER: At Yale Law! [LAUGHTER]

MICHAEL S. SOLENDER: I can testify that that's true!

PROF. HAROLD HONGJU KOH: What I would add to Ben's list — expert counselor and leader — is that in the government, if you're a government legal counsel, but particularly the Legal Adviser at the State Department, you're also a spokesperson on positions of international law. In the article that I assigned for the CLE reading, the main phrase I'd like you to remember is "the legal adviser's duty to explain." If you're working with people who are doing something controversial and you think it's legal, then — particularly in a public forum — you have a duty to explain why you think it's legal, for a number of reasons.

First of all, other countries are going to try to figure out whether what the United States is doing is legal or not. It's important for them to understand your rationale. Secondly, it's not likely to be justiciable, so no court will pass on the issue. Setting forth the internal rationale is important. Third, if it's an issue on which the international law rules are evolving, like drones or cyberspace, getting that legal position out

there blunts the notion that you are creating some kind of black hole where nations can do whatever they want. It also puts pressure on countries who would prefer not to have a legal rule, to have one articulated out there to which they need to respond. Now then, when you do that, you're going to take some heat and that's part of the job.

One thing that I've reminded myself of every day was, even though I had a client who was a person — Hillary Clinton, President Obama — even though I also represented an institution — the State Department — you take an oath to uphold the Constitution and the laws of the United States of America, not to work for any particular person. That's your ultimate loyalty. You have to return to the Academy and defend yourself to those who don't understand, necessarily, the factual background.

It's important that you did the right thing, because it will define you, whether you had any sort of concerns about it or not at the time.

MICHAEL S. SOLENDER: Thanks, Harold. Bob, let me turn to you. A couple of questions; let's start with this one: Is it easier, as outside counsel, to avoid that when you have multiple clients? In other words, you've got a client list; we talked about it — it's huge — so I don't think you're defined by your clients. Is that easier from where you sit, or is that just by nature of your practice?

ROBERT B. BARNETT: Let me start by saying I'm very proud to be here with Michael and all these people. Michael is the *best*, and those of you who don't know him, should, because he is the best. I also want to quickly thank Debevoise and Eric. When I got here, I got a Debevoise mug, I got a Debevoise pad, and now I've got a Debevoise coaster! [LAUGHTER]

ROBERT B. BARNETT: At Williams & Connolly, we have none of that; we have bullet holes in the walls and blood on the carpet! And no mugs! [LAUGHTER]



So everyone take your mug and Eric will pay for it!

A serious answer to your question: I think it's much easier for outside counsel or, as I call them, "outhouse counsel." We're hired guns. Most people regard us as hired guns — hopefully ethically, hopefully properly, hopefully in the best tradition of the law — but we're not seen quite as integrated with our client in the same way as an in-house counsel or a government official might be.

I take seriously the word "counsel." I think my job is to counsel. That can mean saying "no." One of the many things I learned from the great Edward Bennett Williams, who founded our firm and whom several of us up here worked with and knew, was that you don't necessarily tell a client "no." You tell a client how to do it properly. Sometimes you have to say "no," but more often than not, you can find a way to get to where the client wants to be.

Another phrase that I learned from him — and, of course, he was the owner of the Redskins and the Orioles and a great man of sport, not just law — was "you never kick up chalk on the line; you stay away from the line." You have to do that and you have to encourage your clients to do that.

I fire a lot of clients — I'm not proud to say that or happy to say that — but the nature of some of the people I encounter is that they think they know best and they're going to do it their way. Well, I'm not along for the ride if it's improper. You have to maintain a degree of professional detachment when you advise clients. It's easier to do that when you're an outside counsel.

I represent a lot of people who come out of government, and I help them either integrate or reintegrate into the private sector. That sometimes means law firms, lobbying firms, boards of directors, books, television, speeches and things like that. The first question I ask them when I take them on is to quote to them the well-known Bill Clinton letter to the Draft Board, where he said, famously, "I want to preserve my political viability" — remember that phrase from the '92 campaign? I say to people, "If you're going in the private sector to do lawyer things, and you ever want to go back in government and survive those hearings that Ben mentioned — those horror shows that these hearings have become — you've got to take steps, in every decision you make, to, quote, "preserve your political viability." That's sometimes a good test.

It is easier, Michael, for outside people, but you have to, all the time, be vigilant and watch what they're doing.

MICHAEL S. SOLENDER: Let me follow up on that, because you went right in the direction that I was going to take this next, Bob. Right now, it feels like there's a pronounced trend towards having any lawyer who was involved in representing businesses to be suspect in the appointment process. So I'm going to cite some specifics that we have — Senator Elizabeth Warren has been very vocal on this, but it predates her. Three that come right to mind: Keir Gumbs at Covington, Antonio Weiss at Lazard, and before them, I remember Rodgin Cohen actually predates Elizabeth Warren, but he was a candidate, potentially, to be Chairman of the New York Fed. I

can't think of a more qualified candidate than that. Each one of them was disqualified somewhere in the process because they were associated with business.

What do you make of that trend, and what do you do with it?

ROBERT B. BARNETT: Elizabeth's a client, so I have to be careful. [LAUGHTER]

MICHAEL S. SOLENDER: Of course!

ROBERT B. BARNETT: At Justice White's confirmation hearing — it was 20 minutes — and we all saw Robert Bork, and we saw Elena Kagan, and we saw even John Roberts. It's become a crucible to get through those. In some cases, unfairly, like so many congressional hearings, it's often a show for the members; they don't even ask a question — they just give speeches. But it's the reality. Some traced it back to Bork; others trace it back further. But if you want to go into government, in a confirmed position, as opposed to an appointed position, which is much easier, you've got to be aware that you're going to go through that. I hope it changes.

MICHAEL S. SOLENDER: Yes. Go ahead, Ben.

BEN W. HEINEMAN, JR.: I do want to make one point, though, that when we're making decisions inside of an institution, you're basically giving the decision maker options, but you have to live with the option chosen. That choice may not be your preferred choice, but you are in the institution, and basically it's a hierarchical organization — certainly a corporation is, as well as the State Department — and you basically are part of that decision, even if it's not your recommended option. You cannot, then, afterwards go out and say, "Jack Welch decided something, but I didn't agree with him." Saying that might violate the attorney-client privilege, but in any event, it's not appropriate. You've got to live with the decision, as long as it's within a reasonable range of discretion. That is a very important idea.

“Ben has coined a term that we've used often and it's become standard in our profession, which is the lawyer-statesperson. It's used, and Ben has used it, in the context of the General Counsel, describing what he envisions and what he expects of all of us.**”**

— Michael Solender

The question to refine it, Michael, is, do outside lawyers have the same kind of institutional responsibility, commitment, and accountability that people who are inside the institutions have? Lloyd Cutler, in his day, could represent the auto companies and the tobacco companies and take aggressive positions, and still go on to be White House counsel. He didn't have to be confirmed. He was a great Washington lawyer, he took all sorts of positions for his clients, but they were the client's positions, not Lloyd Cutler's positions. The question is, can lawyers in firms, as opposed to lawyers in institutions, have that detachment from their clients? I would argue, as I've just said, if you're inside the institution, you basically have to defend it or leave. I mean, you're either going to accept it or you're going to leave, and there's no choice. That's different for outside lawyers who represent clients but are not part of the client. We should make a distinction in the discussion between inside lawyers and lawyers in private practice representing multiple clients.

MICHAEL S. SOLENDER: Let me bring Eric into the discussion, because in many ways, Eric, you've been the definition of the revolving door. I mean, you've been through it for a few turns, right? I mean that in a good way! [LAUGHTER]

I mean that in a good way! DA New York, AG, Morgan Stanley, Willis, Insurance Commissioner, and candidate for Attorney General; you've been on all sides of that. Let's follow this up. Does participating in the revolving door, does that qualify or disqualify? As Ben said, 30 years ago, that was a good thing; that made you valuable. But what is it now?

ERIC R. DINALLO: I respect Senator Warren, but I would say that the absolute most significant public service that I was privileged in and associated with was my time at the Insurance Department, with the World Trade Center settlement, dealing with the monoline MBIA, AMBAC, and of course AIG and the financial crisis. I would say that, absolutely, fundamentally, if I had not had tours through Willis, through Morgan Stanley and Paul, Weiss, I absolutely would not have been able to do the job I did. We can debate about good or bad, but to me, I felt fundamentally differently engaged. I understood to a degree, capital markets. I understood both sides of the argument. I could worry about not just policyholders in that instance, but the long-term viability of the insurance market. I had a certain credibility in brokering these multibillion-dollar transactions that came from having understood and being able to speak the language and the vocabulary of the private side. I understand what she's concerned about to a large degree, but my personal experience has been that the private and public service experience has been very synergistic in ways that you would want — in other words, in protecting consumers and protecting policyholders. Ultimately, getting done what my principals at that time wanted to get done.

MICHAEL S. SOLENDER: Eric, taking Warren out of it; what are the consequences for these institutions? You've been in many, I've been in several — all of us have — but really, at least for the time being, almost disqualifying people with a business background — what does that mean for those institutions and governments of which they are part?



ERIC R. DINALLO: What it means to some degree is they are going to be less proactive and more reactive. I don't think it's good for the regulatory community or for the enforcement community. They won't actually know, necessarily, where the bodies are buried. They will be one step behind on a lot of critical issues. They may miss subtleties in meetings and in disclosures and submissions that they would otherwise pick up. That, to a large degree, is actually unhealthy. They may show up with a pedigree and an approach that is — we'll call it "academically pure" for this purpose — but actually I don't think they'll be even as good on the enforcement and on the kind of things that the critics are actually worried about. That's the irony: I understand that there's a concern about coziness and capture, but the people who have been really effective have often had some tour through the private side. Or at least have had clients from the private side, so that they understand what the most important issues are. Where are the red herrings and where are the true drivers that can bring about bad outcomes?

You and I have seen and worked with friends who have gone on to government service and have been described as going native! They know how to do it, and they've become the most aggressive.

I just want to go back to your list of very prominent people who have been blown up in the hearings. My friend, Caitlin Halligan, was at the AG's office. She clerked for Supreme Court Justices. This is a woman, when she opens her mouth, full paragraphs come out that are incredibly lucid. She got disqualified not because of competence, not even because of any personal issues, but because in part she argued two cases as Solicitor General for Attorney General Eliot Spitzer, is what I recall. There ought to be a rule, maybe, that it's one thing about your writings and even maybe, your personal life, obviously, but it's another thing when you're actually up there, as a solicitor general or someone who's taking reasoned positions on behalf of your client in government. There ought to be a rule that those activities generally are out of bounds.

MICHAEL S. SOLENDER: Eric, we talked about that before. Isn't that a challenge to the whole identity of our profession? In many ways, many of us are advocates. Ben's talking about something different and I'm in that position. What happens there, I'm either accountable for it or I have to leave. But here, we're talking about somebody whose job it is to advocate.

ERIC R. DINALLO: It's even worse than advocate. It is advocate and then it's a subtlety of advocacy, because when you're the Attorney General, you're often taking positions on behalf of a governor who might be from a different party. Like was done on CSE and the double bunking of prisoners, where you're defending cases that you actually, as a political matter, don't believe in — but it's a suit against the government. You're protecting the agency that got sued and, up to a point, you take a reasoned position. Then Caitlin or someone goes up there and argues it in the Court of Appeals, and they're disqualified. There's just something fundamentally wrong with that.

MICHAEL S. SOLENDER: Yes. Michèle, let's get you into this. You're at one of the most respected large global firms; you've got a

thousand partners and clients. Weigh in for a moment on that separate identity question. I was in a firm for 10 years; we all wrestle with identity. Please give us your view on that.

MICHÈLE O. PENZER: Being in a law firm, you may have clients with a variety of views that take different and even conflicting positions on certain matters. You quickly realize that you are an advisor and counselor, and you are not the ultimate decision-maker. The job of good lawyers, regardless of whether they work for the government or whether they are in private practice, is to offer an objective point of view and provide clients with viable options. Clients value critical thinking, sound judgment, and advice that accounts for their business imperatives.

To a certain extent, though, it's a personal decision as to how you want yourself to be identified. Do you want to focus your practice on something very specific or something a lot broader?

MICHAEL S. SOLENDER: Let me give you the scenario. You and I haven't discussed this, but I'm sure we have both felt it, that dreaded feeling that you're walking into one of these representations that's going to go someplace really bad. Then it's going to be associated with your career. Internally, it's going to associate, potentially, if you're a partner, or externally. What do you do about that? How do you protect yourself from those situations? We've all seen it — it happened in our firms! How do you handle that?

MICHÈLE O. PENZER: I'm not a litigator, so I'm a different kind of advocate than some of the other panelists. As a transactional lawyer, I do deals, and I advise clients on how to get deals done. Part of what I do is to figure out how to get to "yes," how to be commercial and how to achieve a good result for both sides. In doing so, I need to be sure to provide the best advice that I can; I need to advise not only on legal issues, but also on reputational issues. As a lawyer that represents large institutional clients, you need to be mindful of the fact that



although you may be dealing with individuals on any given matter, your client is the institution that employs these individuals. That institutional client may have its own set of concerns that may transcend any individual transaction. If you are mindful of all of these issues, and provide appropriate, thoughtful advice, you are doing your job.

MICHAEL S. SOLENDER: Harold, jump in.

PROF. HAROLD HONGJU KOH: I've been confirmed by the Senate twice. The first time it was unanimous, and then the second time, after I'd been Dean of Yale Law School, I became controversial. I got enough votes to get confirmed, but not enough to get ratified if I were a treaty! [LAUGHTER]

What I came away believing is, it doesn't actually affect what you do, because they don't care about what you actually do. They care about what they can characterize about something connected to you. Here are two stories. First, I supported the U.S. ratification of the Convention on the Elimination of Discrimination Against Women (CEDAW). The treaty body has an interpretative committee that evaluates different countries, and one of them was Belarus. Belarus has a holiday called "Mother's Day" where they

require promotion of images of women working only in the home. The CEDAW committee said, since this is presenting these stereotypical images, it's inconsistent with the treaty which forbids discrimination against women. At my confirmation hearing, one of the senators said, "Dean Koh, I understand that you support this treaty, and that you oppose Mother's Day." [LAUGHTER]

And my mother was sitting behind me! [LAUGHTER]

This was a low moment! My mother learns, at this point in my life, that I'm opposed to Mother's Day! [LAUGHTER]

More to the point, though, I gave a speech at a Yale Club event, and – I was talking about globalization in American law schools – someone asks, "Do you think that law schools should teach Islamic law?" I said, "International lawyers should understand Islamic law!" Of course, this, then, became "Koh favors the imposition of Sharia law." [LAUGHTER]

At my pre-confirmation meetings, a senator was aggressively asking me about this, and I finally said to him, "Senator, if you had a Fortune 500 company in your district, and the General Counsel didn't know Islamic

law, that person is committing malpractice. You want me to be the Legal Adviser to the State Department and be willfully ignorant of the law that governs a large percentage of the world in which they're going to have to deal with?" He obviously had never thought about it; he didn't ask me about it anymore. But he voted against me, anyway! [LAUGHTER]

MICHAEL S. SOLENDER: Ben, I've always been taken – and you and I have done this many, many times – by your reminder to the students, when we're doing this, that your first loyalty is to the company, and not the individuals who run the company. We're talking about these identity issues and client issues that can take you to very difficult places in the course of your career. What's your advice on that? How do you keep that identity and make sure you have your integrity? Because you know, and I know: it's very easy, in that boardroom, to go with the flow and not make waves.

BEN W. HEINEMAN, JR.: Let me give a prefatory remark on Elizabeth Warren, and then I'll answer the question, because it's very profound.

Before we pass over Elizabeth Warren too quickly, she does represent a popular strain which has some legitimacy in the country.

It's unfair to pick on lawyers. But the lawyers are just a symbol of a populism which has a foundation, in terms of corporate misdeeds, inequality, and the way the political system works. I urge all of you to go back and read about the Populist Party in the 1880s and 1890s. It sounds an awful lot like today. These concerns need to be debated, and all of us who are involved in the corporate world need to look in the mirror regarding what the role of the corporation is these days in society, whether it's financial services or manufacturing companies or whatever the case may be. We shouldn't pass by her without noting that she reflects a deeper strain about what's going on in the society, that requires some attention.

Look, the reason that she distrusts corporations — all we have to do is read about Volkswagen. It's a truly incredible, BP-sized problem by corporate folks who just lost their way. Their view of the law is, "who cares?" They're going to pay for it. We'll find out over time, but it will be a monster mess.

On your question, the other formulation that I use is what I call "the partner/guardian tension." This is the biggest problem facing lawyers inside of institutions and certainly facing lawyers inside of corporations.

"We need to be effective to be partners to the CEOs" is your point. But at the end of the day, our responsibility is to be guardians of the company whom we actually represent.

Working out that tension is extremely complicated — I'm not going to go through all the permutations of it — but it is that problem that we have to address. Clearly, we need to be both business partners and legal partners and help business leaders accomplish and do things in the right way and give them options. But at the end of the day, we have to be guardians of the company whom we ultimately represent. There will be times when you have to remind the CEO, the leader — most of whom are strong-willed and impatient — that no, you have to stop, you have to get the facts, you have to consider alternatives,

Iwant to talk about how lawyers can transcend that role; how you can become more than just what your career is and become that lawyer-statesperson, with a broader definition. That is somebody who's not just a lawyer, but a citizen; somebody who's contributing to society in multiple dimensions.

— Michael Solender

or whatever the case may be. There is no question that your efficacy, especially in these hierarchical organizations, depends on the people in the organization thinking that you have the support of the CEO. If they perceive that the CEO thinks you're a jerk; if he denigrates you, or she denigrates you — they say, "Oh, it's just the lawyers" — you're finished. It is an incredibly delicate balance to have that confidence, to have that sense that the CEO supports you, at the same time being the guardian of the corporation and not just the partner of the business leaders. We obviously teach this, but this is the fundamental problem that anybody who is inside an institution faces. It's the same whether you're a General Counsel at the State Department or whether you're the General Counsel at the University of California System, which spends \$80 billion a year and has eight campuses. These are problems in major institutions — profit, non-profit, or public sector.

MICHAEL S. SOLENDER: I'm going to ask for questions in a second. First, I'll share with everyone an anecdote that highlighted this for me. Early in my career, I was involved in defending a very difficult Grand Jury investigation, and a senior partner, who everyone had a lot of respect for and was a very accomplished lawyer in Washington, brought me in. It was right in the heat of the proceedings, he said, "I'm going to give you some advice. If somebody has to go to jail, make sure it's the client and not you." [LAUGHTER]

ROBERT B. BARNETT: In our firm, it's the young associate! [LAUGHTER]

Michael, can I make one quick comment?

MICHAEL S. SOLENDER: Yes, please, go ahead.

ROBERT B. BARNETT: The great CEO wants what Ben described; he may not like it at the time. Ben and I had the interesting experience, while he was inside counsel at GE and I was doing work personally for Jack Welch — one of the great CEOs of modern times, and one of the toughest CEOs of modern times. Ben spoke to executive power, and when I saw that happen, I admired it. Jack grumbled about it, but he would repeatedly say to me, "Glad he's there; glad he's giving me his advice." Because the good ones want that, whether they're government officials or clients, if you're an outside lawyer; or CEOs if you're in-house counsel — they want that. If they don't want it, you don't want to be there.

MICHAEL S. SOLENDER: You highlighted what I was suggesting in the introduction to Ben, and that is the path that he created, the role that he created, which is actually not yet true internationally, but it is true in many of the larger corporations. I say it's because of Ben, which is that you are a force to be reckoned with. In other words, they have to get through you to be able to do something that way. That's him and that's how it started.

ROBERT B. BARNETT: I do resent the fact, when you did his bio, that you left out his 12 minutes at Williams & Connolly. [LAUGHTER] We're proud of him, too!

ERIC R. DINALLO: A lot of people are going to read this. They're younger, and just for the younger people, I enjoy hearing

about all these giants of the bar, and we're sitting with them now. I do think that one of the big aspects — and Ben mentioned it, but he ran over it a bit — is having a very complete life. That is very important. It's important to spend a lot of time on friendships and community. Serving in government early on gives you a bit of independence in that early experience; it gives you the confidence that I'm talking about. Also, making sure that you're a multifaceted person, as much as you can be, stops you from needing praise and fulfillment at those tough moments. Then you're more likely to say, "This is not a good idea." You can step away a little bit.

MICHAEL S. SOLENDER: You're right on our next question, so it segued beautifully into it. Let me ask first, is there anything that the people in the audience want to ask? Yes, please?

[QUESTION FROM AUDIENCE]: [Question about how attorneys in the government are characterized]

ERIC R. DINALLO: It's a bit of an extreme analogy, but I don't think it's untrue; the DA or the U.S. Attorney is often characterized by the cases that he or she brings. I was exposed to Arthur Liman at Paul, Weiss, one of the greatest mentors I ever had, and Mary Jo White, here at Debevoise. They would both say the most important cases that they did were the ones they didn't bring. The most important decisions are when they step up and say, "There's just not enough evidence," "It's unjust," or whatever the test is. It is the case, absolutely hands down, that you have more independence and you can exercise it as outside counsel. That, to a large degree, is why people make the choice — they actually enjoy the variety and independence — you can do more things as outside counsel. You can be on more panels and be more engaged on the outside. You can write articles and op-eds. When you're at a company, like you were saying, you often become identified with the company, and it's more difficult.

“Right now, it feels like there's a pronounced trend towards having any lawyer who was involved in representing businesses to be suspect in the appointment process. So I'm going to cite some specifics that we have — Senator Elizabeth Warren has been very vocal on this, but it predates her.**”**

— Michael Solender

BEN W. HEINEMAN, JR.: Let me respond very simply. In terms of the criminal justice system, the DA, in theory, and the U.S. Attorney, are supposedly vindicating the public interest. They have a broader field of vision when they're making decisions about what to do, than the defense lawyer, who's supposed to defend the defendant. There is a clear difference in what they are thinking in terms of their roles. That's number one.

Number two, the important thing, in terms of inside a company, is you are not doing what the businesspeople tell you to do. Analysis precedes advocacy. You are not there to advocate what they tell you to advocate. A whole concept that I deeply believe in is that you have to make the decision about what the appropriate position is to take, before you advocate — not advocate just what they tell you to do. That is a very profound point, and the example we were talking about last night, of Enron. It's Exhibit "A" for feckless, supine lawyers, both inside and outside, who did what the businesspeople told them, even though it was demonstrably wrong. They should be on the wall in the Hall of Shame in every inside lawyer's office in the world. It is very important to focus on the fact that before you take action, you have to do the analysis and figure out, again, what's right. You may not be able to convince your businesspeople that that's exactly what they want to do, but that's what you have to do — it is really important. The advocacy comes second; it's not first.

MICHAEL S. SOLENDER: Any other questions before we move to the next segment?

PROF. HAROLD HONGJU KOH: I try to follow two rules: what I call the "airplane rule" and the other I call the "pinball rule." The airplane rule is "if you're going to be in at the landing, you have to be in at the takeoff." With both government jobs I had, in speaking to Madeleine Albright and Hillary Clinton, you have one ask, and my ask was, "To defend something, I have to be there when the decision is being made." There will obviously be things in any huge organization that happen that you don't know about, or that nobody knows about. You will have to respond to those based on your investigation and assessment. But for big decisions coming from the center, you have to be there while it's being formulated, and have a discussion about it, to be able to defend it. It usually means something as banal as being in a morning meeting where all options are being discussed, so that you can, from the beginning, shape it and push it in the direction that is both lawful and correct. There are some decisions that are "lawful but awful," and those are horrible ones to be in the position of defending.

The second rule, the pinball rule, was given to me by Derek Bok, the President of Harvard. He just said to me, "If you don't shake the machine, you're not really playing. If you tilt it, you're not a very good player, either." He says his rule in the room is, "Shake it, but don't tilt it."

MICHAEL S. SOLENDER: Interesting. All right, let's move to the next question, which Eric nicely segued into. Here it is: How can a lawyer-citizen — you've got that definition — serve his or her clients, and the public welfare? We've been entering into that. If you

want to be a citizen in addition to your lawyering, as Eric suggests, what do you do? Do you volunteer in the community, *pro bono* work, bar association participation, government service, run for office? We'll get to Eric on that one. But let me start with Harold.

Harold, you're teaching at Yale, or you're the Dean, and you want to have a greater impact on the world. What do you do? There are different examples in the law school; I've seen people write, volunteer in the community, or serve in office. People who write fiction seem to be a big thing at Yale. What do you do?

PROF. HAROLD HONGJU KOH: I learned early on that my role was not in elective politics. I'm in awe of people like Elizabeth Warren or Larry Lessig, who believe that they can run for political office. I'm a professor. If you teach at a great law school for a long period of time, you end up knowing lots of people who have become public officials, and they seek you for counsel. That's one way to do it.

Secondly, you can bring cases. We brought a Haitian refugee case in the early '90s, and then another case on behalf of Cuban refugees, also in the '90s, both of which were heard in some way by the Supreme Court, both of which were big public-impact litigation cases. That's another way to do it.

Third, you can do public service by non-profit work in your job.

Finally, you can take leaves of absence and go into the government, which I've done. In my career, I've served in the government for 10 years.

One great thing is I'm always a professor, even if I'm doing different things in that job. So my first five years after law school, I had five different jobs. My father-in-law was a little worried when I asked my wife to marry me. Then I became a professor, and I have held one job. In fact, I've held many jobs, but it's always been under the title of "professor."



MICHAEL S. SOLENDER: Now let me turn to Ben. I'm going to take you back now. You're the General Counsel of GE; you've got a distinguished public service background; but now you're serving a demanding corporate client and a somewhat demanding CEO. Is there room for being a citizen, too, in that mix? How do you do it?

BEN W. HEINEMAN, JR.: In the case of a great global corporation, which is like a nation — at one point, GE's revenue was the equivalent of the twelfth-biggest GDP in the world. It turns, importantly, on how you define corporate citizenship. You can do private things; you can work in your church or the community — whatever you want to do — and obviously, taking care of your family is first. But there are four ethical responsibilities for all of us in the profession, and especially when working inside corporations. The first responsibility is to the institution. Then lawyers and the employees are also responsible to the clients and stakeholders, whether it's the actual clients or all the stakeholders or constituents of the corporation, which is talked about a lot. As lawyers, there's a third responsibility to the justice system, basically, to the rule of law. Lastly, there is a responsibility to society to promote public goods that are not going to be secured by market mechanisms.

Those four ethical responsibilities, it seems to me, should guide inside lawyers in everything that they do, and it leads, basically, to the issue of citizenship for corporations. The way

I saw it, an awful lot of what I did was to try to answer the question: What could GE do as a corporate citizen? Of course you can go into public service; you can do other things. But to me, it was: how could I help make GE be a good citizen in the world? We were in 120 countries; we had 220,000 employees; we were bigger than Buffalo or Orlando. It was a huge task. Without getting into the details under each of those issues, that is where, to me, our responsibility, as inside lawyers, is citizenship and these four ethical areas. That's where we should spend our time, and the issues are so broad we can only make progress, never reach an end point.

ROBERT B. BARNETT: You listed, and Ben has listed, some of the many community service things you can do, public service things you can do, and I'm all for that. When I speak to young people — students and young lawyers — I say, "Go work on a campaign." Why? I've had the great honor of working, this will be my tenth presidential — I'm so old — since 1976 — you don't have to work on presidential campaigns. Working on campaigns teaches you interpersonal skills; it teaches you how to deal with backstabbing. [LAUGHTER]

It teaches you how to advocate; it teaches you how to research; it hopefully helps you help some either current or future public servant. You work towards goals you believe in, of a public nature. There are many people in this audience who have done this. I say, work on a campaign. It's a great way to learn, and it's a great way to contribute.

MICHAEL S. SOLENDER: Interestingly enough, one of my kids worked on a campaign this summer, and had that exact experience. I agree with that wholeheartedly.

Eric, let's go to you. You know my admiration for your run for office. But we've got to explore this; we can't leave this subject without going into it! How does a practicing lawyer — and you are a very well-respected lawyer in New York — summon the courage to run for public office? Let me be a little



more specific: what was your thought process? How conscious were you of all the train wrecks that people have had in doing that? I'm going to cite, specifically, Eliot, who was one of your bosses; John Edwards; and every governor of Illinois. [LAUGHTER] What's your thought process on that?

ERIC R. DINALLO: Not thorough, I'm telling you. The thought process was relatively simple. I love public service. I thought I had the best appointed job you were going to get in the state during the crisis, being the Superintendent of Insurance. I wanted to continue to serve and therefore had to run for the next level of office. This is half-joke but half-truth: the fundamental, profound error was to think that because I was apparently the most qualified candidate for the job, that gave me *any* qualifications to run for the office. It is absolutely a nice thing, and it maybe makes you feel like you can get up and go out there and win debates and win editorial support, as I did, but it inures to very few votes unless you find a way to convert it. For first-time candidates, it's not easy. In fact, Eliot Spitzer, who ran twice for AG, came in dead last the first time, and then won in a squeaker in the second time.

To me, it was — just for people who are ever thinking about it — the most difficult thing I have ever done. You wake up one day, and all of a sudden you have to simultaneously fundraise, understand the policy issues, understand the politics, and go to another level of public speaking. I'm a stammerer, so it's very hard for me to speak in public, very hard for me to debate and give prepared remarks. I had two levels of preparation — the speaking mechanics and then the substantive analysis, but it was fantastic for me. It was transformational. It made me a more interactive person. I walk into rooms feeling different; I feel much more confident about myself; and I think, and analyze on behalf of clients, at a very different level.

For instance, just analyzing issues, I, more instinctively than before, go to what will be the headline. Because that's why you're

You need a relationship with that CEO that's sufficient, that when there's an issue that's going to come up, they're going to trust you, and vice versa. There's going to be a level of trust there. If that relationship's broken, this doesn't work.

— Michael Solender

talking about what is going to be used against you, or your client, or the decision at the highest level — like you're "against Mother's Day." You see it so quickly and it's so alive when you run for office. It's both sad and somewhat transformational for your future endeavors. It's great, at any level.

I ran state-wide, which is also a big challenge as a first-timer. But it's absolutely great for people to do at any level, because, whether it's working on a campaign or running for office, the number of disciplines that you get to do is like going to camp for a whole year. You get to do all this stuff, and if you run a good, clean campaign, you come out probably either neutral or better than before. You are, arguably — at least with me — professionally, even personally changed for the rest of your life.

MICHAEL S. SOLENDER: Let me switch this in a slightly different direction, because I think this will be interesting to some people in the audience.

One of the things that's really, when we talk about one deterrent for people going into public service, which is the reputational issues and the problems with it, but there's another one which we should bring out, and you and I can commiserate on this one. Going into public service now, if you're reasonably well-compensated, which everybody at this table is, is a very large economic sacrifice. More than it was 30 years ago to do that. How did that factor in? We both had young families when we did this; many people do. How do you factor that into your thought process?

ERIC R. DINALLO: It's a big issue. The disparity of income — the most you're going to get paid, at least in New York State, is

going to be around \$150,000, compared to what you can be paid privately. I'm very privileged to have a wife, Priscilla Almodovar, who is at a major institution, so she is the second earner in the family. As to running for office, the biggest pressure, the biggest impact, is on the family. There's no amount of evenings and weekends that you shouldn't be doing something. Every holiday, you've got to be at a parade; every night, you've got to be at a cocktail party, shaking hands. Then, when you're last in the polls, it's like, what are you doing? It feels really "bad," to be polite for the transcript! [LAUGHTER]

The funny thing is, Priscilla and I turned to each other, and we said we love public service, both of us — she was also in Eliot Spitzer's cabinet. We love public service, and look what the kids are seeing. They're seeing that we're arguing a lot more; the heat's turned up. She's a Latina, I'm Italian-American — you can only imagine. It turns out, irony of ironies, that in the middle of it all, my son says he wants to run for class representative and now class president. I almost crashed the car when he said it from the back seat in the middle of the campaign and at the lowest point! So, who knows what you're really doing to your children! [LAUGHTER]

MICHAEL S. SOLENDER: Michèle, let me bring you into this discussion. We talked a little last night, and it's something that you focused on, being in management in a law firm. To what extent are people exploring those options: thinking about being in public service, thinking about doing other things, yet while we have these demanding careers and lots of clients? You've watched that process. Probably people have asked you for your advice. What do you tell them?

MICHÈLE O. PENZER: If you're interested in it, go for it. I've seen a lot of people over the course of my career go in and out of public life, move into government and come back to law firms, move on to do very different things. It's really just a matter of personal preference, and to the extent that you are truly interested in something, absolutely go for it. There's no reason to define yourself so narrowly and to believe that you are entirely comprised of your current career when there are so many options.

MICHAEL S. SOLENDER: Let's take Latham, but it could be any of the lawyers' firms. Is that something that would still be valued as an experience, if you go into public service?

MICHÈLE O. PENZER: Yes, absolutely. In fact, it's incredibly valued. When we're hiring people, we really look for people who have had a wide variety of experiences. In fact, when I see a résumé of somebody who has a broad set of experiences, it's actually really interesting. We really look for people with a varied background, people who can bring a unique perspective to the increasingly complex legal matters we handle for clients.

MICHAEL S. SOLENDER: Harold, having observed this for 25 years, it seems to me that you need a degree of courage to go into this arena now, and to actually go into the public service and then put yourself out there. What do you advise people when they ask you about the possibility of a career in public service?

PROF. HAROLD HONGJU KOH: I always like it because I went to the government straight from my clerkship, and I love baseball. One of the things I like about baseball is you don't have to be a good baseball player yourself to love watching the game. You don't have to be a good player to know that one player is better than another player.

In one of my first meetings at the Justice Department more than 30 years ago, the Attorney General walked into the meeting.

I'm sitting there, watching. And to be honest, he didn't do very well! Then you start to think, "Maybe I should play this game and see what the better players do." Over time, it affects the way you see the satisfaction in your professional life. When I watch baseball now, I always admire the canny knuckleballer who comes in and gets one guy out, doing it all on guile and wit. It's not just about throwing 97 miles an hour all the time. That's what I'd say. And where courage comes in is playing the game and getting knocked into the dirt or getting back in the box. That is life.

MICHAEL S. SOLENDER: Michèle, you heard Eric's rendition. What do you think about running for office?

MICHÈLE O. PENZER: Me? Definitely not! [LAUGHTER] No. Look, I was a government concentrator in college. I remember getting to law school and we would all introduce ourselves and go around the room and mention what we had done in college. Because I had been a government concentrator, everybody assumed that I would be interested in going into politics. I explained to my fellow students that I was really interested in policy but not politics. I believe that politics is a bit more courageous.

BEN W. HEINEMAN, JR.: We should tip our hat to Harold on this subject, because he has had a career where he has written what he believed, and let the chips fall where they may. He could have been on the Supreme Court, should be on the Supreme Court; but he will never be on the Supreme Court, because he's controversial. He took positions that were controversial and the second time, he got confirmed, but it wasn't necessarily overwhelming. Bob mentioned political viability. He didn't mean this in an invidious way, but you can't live your life looking ahead to the next chance. You really do have to do what you think is right, say what you believe, and let the chips fall where they may. Your career will go in whatever direction it goes.



Harold sits here, in front of us, as a very principled person who may not have arrived at exactly where he wanted to end up, but that's for the best possible reasons. I tip my hat to him for that.

MICHAEL S. SOLENDER: I would say, Harold, watching your career — and we've had an opportunity to interact for many, many years — I have thought the integrity you showed in each stage of this, whether it was in the Human Rights Court or when you were in government, was absolutely remarkable, and was something that I would aspire to be able to do in my career. So I agree with that completely. No response needed!

Bob, let me turn to you. Tell us about the great ones. Edward Bennett Williams, you referenced earlier. Clark Clifford; Arthur Liman was mentioned. Abe Fortas I put in was the founder of the firm where I was for 10 years. They had a fascinating identity. They were the lawyer, but also the advisor. The presidents would come to them and the leaders would come to them. They'd really be in the center of the dialogue in Washington. How did they do it? You're as close as there is to that today; you really are that today. How did they do it; how do you do it; is that still possible?



ROBERT B. BARNETT: I had the great honor of knowing most of those people in one way or another. You left out some great ones ...

MICHAEL S. SOLENDER: Yes, there are many.

ROBERT B. BARNETT: Harry McPherson, was one of the greats. You mentioned Lloyd Cutler. Abe Fortas, Vernon Jordan, Edward Bennett Williams, and many others were great advisors.

It was a simpler time, and I mean that. There wasn't 24-hour cable. There wasn't Citizens United, and a lot of other things that I could do a whole morning on, that have changed. It was easier to do that, because confidences were maintained. Sadly, they often aren't now. There was generality as opposed to specialization. Now, so many of the really good lawyers are specialized; there are very few generalists. Immodestly, I've had chances to go in administrations; never have, because I find I can help those people more from the outside. Carter administration, and the Clinton administration, Obama administration, I've been able to help people in office by having a dispassionate view and not working for them. I was able, maybe, to see the broader picture, particularly the press coverage. I'm all for going in, but I've done it a different way.

With specialization, with 24-hour cable, with Citizens United, with the absence of the kind of trust and confidentiality — and, frankly, the absence of interpersonal relationships like there used to be, where Republicans would ask Democrats, and Democrats would ask Republicans — very little of that now. It's much more difficult to be what they called Williams: "the man to see," or "the woman to see." There are still people like that, and they are incredibly valuable to the people they help, but we've evolved since the days of those people, and it's a different world.

MICHAEL S. SOLENDER: Ben, you and I have talked a lot, and we've covered this in our classes, about the specialization movement, the absence of the generalist coming through now. Do you want to weigh in on this? I know you've got very strong views on it.

BEN W. HEINEMAN, JR.: One of the great problems for young lawyers today is the pressure for specialization. I stand up in front of students and talk a lot about careers and other things, and I say, "You're looking at one of the last generalists." I consider myself to be incredibly lucky that I have been able to hold a variety of interesting jobs and still be a generalist. I'm all for specialization; I'm all for expertise and excellence. However, we somehow have to figure out how, for

young people, to give them opportunities not just in their institution, in their communities, for the public service, the hospital, the child care agency — whatever the case may be — but we need that broad, general understanding of society to be the kind of wise counselor and leader that we're looking for in people in the bar. We basically beat the crap out of these kids today. The schools don't prepare them well; the law firms don't treat them well; the corporations won't pay them well and generally don't hire them early in their careers. We're doing a terrible job among young people. Part of it — an important part — is the pressure to specialization.

The need for specialization is understandable from the point of view of the clients, but the clients are as responsible for this problem. I've written a long paper with David Wilkins of Harvard and Bill Lee of WilmerHale on this subject of how we are failing in our ethical duties to young lawyers. We need to do a much better job for young people, so that they have a generalist perspective, and are not immediately and irrevocably slotted into the subsubspecialty of some corner of the tax code or the securities laws.

We could talk about this for a long time, but I do think it's a profound question, because the essence of all the visionary things we're talking about here today is an understanding of society, of history, of culture, of the way things work, that goes far beyond the technicalities of law. This is a deep, deep question, and with all due respect to Harold, who doesn't — he's not the problem, he's the solution — the problem starts in law schools which are way too narrow in the way they approach problems. The narrowness continues on when they go out into their profession, unless they go work in the government or go work in a public interest firm or go work in a different setting. This is a big problem.

MICHAEL S. SOLENDER: Eric, I was going to go to you next on this subject. You and I grew up in an era of specialization; we were not, during that period, of the

general consigliere; that was dated by the time we got out. Yet, you had, and you are, a generalist. How did you manage it?

ERIC R. DINALLO: To be absolutely fair, part of it is the various government jobs that I've had. I actually started out at Paul, Weiss, and got exposed to Arthur. I saw what a great advisor he was, very first-hand, very influential on my career. I got some early trial experience there by doing *pro bono*. I then went off to the DA's office as a prosecutor, and I got hooked on trials. That gave me a certain amount of credibility to do white collar securities cases, which was really the only reason that Eliot Spitzer hired me. He saw what I'd been doing at the DA's office in the cases that you and I were on, Michael. Eventually, I went in-house to Morgan Stanley and got a much broader view about how to give advice and what the issues were out there, across the whole regulatory space. Then there was the insurance thing, which became not so much about bringing cases, nor even advocacy, but about brokering transactions and understanding the market.

For me, I've been really privileged to even approach becoming the generalist that I saw in my early days; but to be really fair about it, it's being around public service. As Michèle said, litigators get away with a lot more, frankly. We are put in positions all the time – whether it's trials or advising, where we're asked to stretch into areas and subject matters and companies and industries that we know nothing about until we crack open the book and get advice from others. Frankly, people want, when they go to a corporate lawyer, to some degree, they want someone for whom this is absolutely the hundredth brain surgery that they've done, of that kind of brain surgery. They're paying unbelievable dollars an hour, and one mistake is hundreds of millions of dollars. It's just a different approach.

ROBERT B. BARNETT: When I talk to young people about this very question, I always say, "To be a generalist, to be a counselor, to be an advisor, you've got to



understand, in this world we live in now, four things: politics, policy, law, and media." Those are four very different things. It takes life experiences; it takes doing government service; all types of ways to get that. One of the many things I love about our firm is just what Eric said – you get thrown into things.

When I was a senior associate, I worked with a then very junior associate, now a federal judge, named Ellen Huvelle, and we got called into Edward Bennett Williams' office. He said, "We have a case under the Endangered Species Act involving the fringe-toed lizard." The fringe-toed lizard was a particular challenge, because they only came out at night, so no one really ever saw them. Ellen and I went out to the wilds of California with a helmet, and we found a fringe-toed lizard. We tried to interview it, but it ran away. [LAUGHTER]

We learned the Endangered Species Act, for God's sake! I don't know how or what, but we loved it! There is little of that now. There is at some of the firms represented here, there's a lot of that. But it's tough for young people, because they're immediately, as Ben says, put into the Section 302 of the Code. That's where they get stuck.

MICHAEL S. SOLENDER: Bob, I wanted to ask you a question about another one of the advantages, and then we'll open it up for questions. There's an anecdote with Clifford

where a client goes to him and says, "What should I do?" He says, "Do nothing," and the client gets a bill from Clifford for \$1,000.

ROBERT B. BARNETT: Ten thousand!

MICHAEL S. SOLENDER: Ten thousand! Okay, ten thousand dollars. Then the client figures, "All right, I paid \$10,000; I at least want to get the value of my advice." He calls up Clifford again and he says, "Why should I do nothing?" Clifford says, "Because I said so," and sends him another bill for \$1,000. [LAUGHTER]

ERIC R. DINALLO: Is that one true?

ROBERT B. BARNETT: I think it probably is true!

Edward Bennett Williams, when we were in the old Hill building, Ben will remember, he was on the eighth floor, and he gave some really wonderful advice to a client. The client called him up and said, "I just can't do that." Ed said, "Well, come over to see me." When the elevator opened on the eighth floor, there were his files sitting there to take home. You can't do that anymore!

MICHAEL S. SOLENDER: Harold, did you want to add something?

PROF. HAROLD HONGJU KOH: There are two qualities that I have noticed really outstanding lawyers have. One is an ability to concentrate and summon themselves for an important moment, even when they're surrounded by a million things. It's a "Be here now" quality, where they block everything out, and in absolutely chaotic situations, somehow are able to really concentrate and take in the big picture.

The second attribute is this "happy warrior" quality, or maintaining an indomitability of spirit. The one time I met Nelson Mandela was at the U.S. Mission at the U.N. here in New York, with Richard Holbrooke. Holbrooke said to Mandela, "Mr. President, you were in Robben Island for 18 years;

how did you survive?" Mandela just started smiling, and he said, "Well, I kind of miss it now...I got a lot of reading done!" How could you not just love this guy? Absolutely nothing is going to faze him! If you can do these two things – Be Here Now, and Stay a Happy Warrior – you're a long way toward being the kind of lawyer you want to be.

MICHAEL S. SOLENDER: In class, you used to describe – you had a wonderful way of capturing that for us, that sticks with me, because 25 years later, I still remember. You would say, "Willie Mays was able to do it all – run, hit, field." Then you would say, "Bill Bradley. Know where you are in time and space." That was how you captured it.

PROF. HAROLD HONGJU KOH: Bradley said, "You have to have a sense of where you are."

BEN W. HEINEMAN, JR.: Let me say one more thing, Michael. The generalist discussion really goes to it and, again, to a bigger issue, which is "How do we define problems?" The most important thing we do is define the problem properly. If we don't define the problem properly, we're not going to solve it. Most of these problems are not narrow, technical, legal issues. Again, we must ask the "Is it right?" question. But it involves knowledge of history and culture and other fields, and at least the ability to know what we don't know, and to ask questions. Vietnam, Afghanistan, Iraq are all terrible mistakes. I don't believe we really defined the problem right. Time-Warner, AOL, any of these mergers are terrible mistakes, because they really didn't define the problem right. If you look at most of the major mistakes in decisions, at the end of the day, it's because they weren't defined right, and that is the great skill of the generalist. There is a reason that we talk about the importance of this. I would stress that, because that's what we face every day in our lives, which is: what problem is it that we're solving? If we don't define it right, we're never going to solve it.

MICHAEL S. SOLENDER: Let me open it up for questions before we go to the last topic. Yes?

[AUDIENCE MEMBER:] [Gives question about the relationship of in-house counsel to others within the corporation.]

MICHAEL S. SOLENDER: What are your expectations from your business clients inside the company, and how do you serve as the guardian of the corporation?

BEN W. HEINEMAN, JR.: I talk about this all the time – I don't mean to give little speeches – but I've thought about this a lot. It is the responsibility of corporate counsel to ask the outside lawyers for their view on what is right; for their counseling, not just for their technical expertise. In this era when money is being pinched and companies don't want to spend much, they want the narrow "Yes, it's the right answer" or "Yes, here's the technical answer" and move on. Not enough times do they ask for the wisdom, and not enough times are the lawyers in the firm capable of giving it, because they're specialists. It's a dynamic problem that needs to be solved.

As people inside the company, we should be encouraging the smart people outside the company to give us their best judgment, not just their best expertise. This, too, is a companion of the specialization issue and is a huge issue. We've got to pay for it, we ought to ask for it, and firms ought to be encouraged to do it.

MICHAEL S. SOLENDER: Let me answer your question. In terms of business partners, I would say two things, and this is our first class. What we're looking for is, one, you need a relationship. Let me talk about the CEO, and we can talk about business leaders, as well. You need a relationship with that CEO that's sufficient, that when there's an issue that's going to come up, they're going to trust you, and vice versa. There's going to be a level of



trust there. If that relationship's broken, this doesn't work. You have to have that sort of confidence in each other.

The other is the one we alluded to before, which is – and Ben puts it, "What's right?" You have to be, to some extent, the conscience of the organization, and hopefully you've got the relationship with your business leaders that when it comes to an issue where you're serving as the conscience of the corporation, they will respect you sufficiently to take your views into account when they're making those decisions. That takes time to build; that takes effort to reach; but that's what you aspire for; that's what you're looking for.

Another question? Yes?

[AUDIENCE MEMBER:] [Asks about billable hours.]

MICHAEL S. SOLENDER: Michèle, why don't you take that first, because we talked about this last night. Billable hours have, for all of us, throughout our careers, generated a certain culture, and a certain degree of pressure. We talked about it last night. There's the buy side and the sell side in our business, right? On the buy side, we work very hard and we have a lot of issues that we have to deal with, but we have some control of our lives. On the sell side, you're working for the client, and the billable hours really matter.



MICHÈLE O. PENZER: At the end of the day, it's a client service business. That is what we do; we are selling our services to clients, and it really does come from clients. As the world becomes more complex, clients need more and more specialized counsel – by market, by subject matter, and by industry. Clients look to hire people who understand their business and who have a strong client service focus.

We strive to maintain our firm culture, which has served us well for 80+ years. We want to make sure that our lawyers feel like they have a say in key decisions. We work hard to maintain our culture in the face of a changing law firm market, where competition is fiercer than ever before.

Commitment is important to client satisfaction; it's not about chasing a certain number of billable hours, but it is about client service. Law firms are competing against other firms that are going to be willing to provide exactly what the clients want. If I'm not available to my clients when they want me available, somebody else will be.

MICHAEL S. SOLENDER: Eric, you've been in a lot of these roles, and now you're a very senior partner at Debevoise. You're in the billable hour world now, and the sell side; but you've been on the buy side, as well. Give us your perspective on this.

ERIC R. DINALLO: Everyone has heard this – there have been articles about it – but the profession definitely put itself in a box when it demanded to get paid by the hour. There's a real need for the industry to reevaluate whether we should go to more of a fee-based and transactional-based approach. It would, in general, make for a more enjoyable lifestyle for everybody. Even probably the client, who can just decide whether he or she got the value that was wanted, rather than going over all these bills with everyone's hours down to the tenth of an hour. Which is really awful, I'll just say, now that I'm here, doing it.

It is also the case that the generalist is endangered a bit, too. Not just because of some of the pressures that we've been talking about, but to some degree, when you don't have a great specialty, you sometimes – although I've been able to do this – can't generate these big, leveraged matters. If you're just giving advice, and that's the number of hours you spend in the day, and you don't have hordes of associates, whether it's transactional or white collar defense or advisory, then that's not going to result in the profitability that you need to have a big firm. It's something that's a constant tension in firms also. No one wants to come out and say it, but some of the people are in that position because they bring in larger transactional matters. That drives the economics

of a law firm. Of course, if they weren't out there as a generalist, they might not catch those opportunities.

When all is said and done, it's really about what Michèle said – it's the client satisfaction. They're either satisfied with it or not. They're willing to pay top-tier billable hours for extremely good expertise. Which can be general advice, which can be that they respect your counsel, your wisdom, your advice so much that they're willing to pay, even as opposed to more extreme technical expertise.

MICHAEL S. SOLENDER: Now the next question will be for Ben.

From the client vantage point, you almost feel a little hypocritical about this, because we all are talking about the value of generalists and how much we've enjoyed having those careers. On the other hand, you have a problem, and we'll go back to your Morgan Stanley days, or Ben, at GE. You have a problem in any trust issue or a leveraged finance issue – you don't want a generalist; you want the guy who's done 30 brain surgeries!

ERIC R. DINALLO: This is another reason why government service has been helpful to me; as you were saying before, you turn to outside counsel to be the voice you need. It can be the expert

voice, but it can also be, "Here's the former Superintendent of Insurance, and this is what he's saying about the transaction." That just carries — it's harder to out-lawyer the former Superintendent of Insurance if it's about an insurance regulatory issue. You'd have to bring in another Superintendent of Insurance, and there aren't too many of those — especially since Governor Andrew Cuomo merged the job out of existence. [LAUGHTER]

I'm a rare species, I'm an endangered species!

You like it — and to some extent, you're willing to pay for it — but it is not necessarily that fine technical expertise that you often turn to. I have to say, it is very clear to me that since I left a law firm and came back, in-house counsel are just like rocket scientists now, in the law. I'm talking to people — and you're one of them — who are like, wow! I amazement by what they know, and so you have to scrap extra hard as an outside counsel, to show your value added as against these increasingly excellent bulked-up in-house counsel.

MICHAEL S. SOLENDER: Let's go to our last question, and then we'll get some more chances for the audience to participate. But the last question is one that we need to tackle. Ben's been very vocal on this, but how do we continue to make this, depending on what your objective is, an attractive profession for people? I have three college-age children now, and I get asked the question all the time: "Do you want them to be lawyers?" I stumble over that question, because on one level, you do. You're so proud of what our profession is and what our careers have been. On the other level, it's hard! It is hard for a lawyer starting out — the law schools now are very difficult, but the first stages of a law career are very, very hard, and you come out with a lot of debt.

Ben, you've been very vocal on this, so let me give you the platform. Talk to us a little bit about your view of law firms and legal



education, and focus on where you'd like it to go, because I know you've got very profound criticism.

BEN W. HEINEMAN, JR.: The first step is "What are the career paths?" I don't think the only career path is going in-house or going to be in a firm. When I went to Yale Law School in the late '60s and early '70s, no one in my class went to law firms; everybody went out to save the world. Now, we failed, but we all wanted to be public interest lawyers, U.S. attorneys, whatever, to advance the public interest. [LAUGHTER]

You have to get into kids' minds an understanding of the debt problem. There are some schools with debt forgiveness, and there are lots of alternatives in initial career steps. Alternatives, in the end of the day, are going to make them much better practitioners in private firms later. That's step one.

Step two, is that I am a huge advocate of what I call "complementary competencies," which is much more than what the law school teaches. It's business, it's public policy and technical and scientific expertise, it's philosophy, it's ethics. We haven't talked at all about the ethical side, how you decide what to do beyond what the law requires inside of corporations. Students need to

understand these things. They have to, for example, be willing to go work in a budget bureau in the state or in the EPA of the state. There are a million interesting jobs out there that kids are not aware of. These public sectors employers don't necessarily come and take them to lunch. We have to diversify the career, broaden out the skill set, and encourage people to seize the day.

Would I encourage a person to go to a law firm? Absolutely not. As you know. I give this speech all the time — just because law firms take you to lunch doesn't mean you should work for them.

MICHAEL S. SOLENDER: Ben's responsible for hundreds of law students at Harvard and Yale not going to law firms!

BEN W. HEINEMAN, JR.: This is a profound problem in the profession, because we are beating the life out of young people. For those of us who are sitting at this table, we've had a wonderful career. I mean, we love it. I've had about seven different careers, but there's not a day I didn't get up and think it was going to be fun! That's the test of life, and that's what's missing for a lot of these young people.

ERIC R. DINALLO: Can I just fight back? I want to fight back on that for one second.

BEN W. HEINEMAN, JR.: Please!

ERIC R. DINALLO: I have to say this. When I showed up at the Manhattan DA's office, I had been through two summers at Cravath and four or five years at Paul, Weiss.

BEN W. HEINEMAN, JR.: Right.

ERIC R. DINALLO: I had been trained to write and research in a way that I would have never otherwise gotten. Now, maybe for those up here who clerked at the Supreme Court and were fully born like Athena out of Zeus' head as great legal giants, it was different. [LAUGHTER]

I needed real legal training, and I needed to learn how to think like a lawyer, get more than law school gave. I needed to learn how to write in a very distinct way. I remember one partner who sat down and said, "This is very well-written" — my father is a writer — "but a memo to a client is not a mystery novel; you must state the conclusion up front." Those are the things I learned. Then I went to the DA's office, and I felt so much more confident about filing the briefs and doing all the work. There is some value; you don't have to stay there forever, but three, four or five years at a law firm can be very helpful.

MICHAEL S. SOLENDER: Bob, let me turn to you. This is what it looks like to a lot of lawyers coming into the profession. A lot of people seek you out for advice at all levels of the profession. But they see huge international law firms, lawyers' institutions; they see huge government bureaucracies; they see large, large matters where they will end up as an anonymous digit in the process there. What do you say to them when they have that perspective?

ROBERT B. BARNETT: I discourage a lot of young people from going to law school, with an exception which I'll mention. The debt you incur, the scarcity of jobs — particularly in law firms, less so in in-house counsel jobs — the move of the good work, the fun work and the challenging work from law firms to in-house in a lot of places; the specialization, makes a legal education, if you want to do one of those things, something you've really got to think about. That said, a legal education, properly incurred, can teach you to think, advocate, research, and write. A good legal education, I believe, teaches you those four things.

The tyranny of the billable hours, which we've talked about, is just so depressing. I know all the alternative arrangements, but fundamentally it often comes down to the billable hours. The other thing that drives me crazy is what technology has done to us. Now, I fight it. I have the original Blackberry. How long has it been since you've seen that?

You have to be, to some extent, the conscience of the organization, and hopefully you've got the relationship with your business leaders that when it comes to an issue where you're serving as the conscience of the corporation, they will respect you sufficiently to take your views into account when they're making those decisions.

— Michael Solender

MICHAEL S. SOLENDER: It goes to the museum!

ROBERT B. BARNETT: I refuse to use the new stuff. I'm really going to shock you: I have a flip phone. I will never change!

MICHAEL S. SOLENDER: You might have to change if Blackberry goes out of business.

ROBERT B. BARNETT: The firm has 20 of these, and as they run out, I use the next one, because you can only get them on eBay. [LAUGHTER]

But in all seriousness: the constant emails, the constant need to be available; it's very, very unpleasant, and makes it less likely that people are going to go to the baseball game or play with their kids or do the other things that we, in younger days, went to do.

So I really say, "Think about it, folks, before you go do this, because it might not get you where you want to be." But well-incurred, it can give you a set of skills that will enable you to do a lot of things, not just go in law firms or in-house.

MICHAEL S. SOLENDER: Michèle, what are you seeing on this? Because you're managing a law firm, and you've got a lot of younger lawyers rotating in; you've got people starting their careers. What are you hearing, and how do you fight this? The fear people have of just getting lost in there.

MICHÈLE O. PENZER: The bottom line is you don't have to get lost. It's a lot of work, there's no doubt about it. Law schools, although they are wonderful places that really

do help people to expand intellectually, don't teach some of the skills learned in practice, no matter what kind of lawyer you decide to be and where you decide to go. There's a lot that can and needs to be learned in those first several years as a lawyer. They can be learned in a law firm; they can be learned in lots of other legal capacities.

If you're really not sure you want to do that, figure it out first. Nowadays, there are more and more people who are taking time, before they decide on a graduate education, to pursue some other things, to try their hand at different types of jobs, to figure out what they really want to do with their lives. I encourage people to do that.

However if you want to be a lawyer, go to law school. You can have a really fulfilling career. I've done it; I've been at my firm my entire career, and I've seen lots of people succeed. I've seen lots of people move on as well. I wish fewer of them did, because, frankly, it's disappointing when people do. We hire people and make a big investment in training them; we really want them to be our colleagues. That being said, we recognize that some people will leave us, and that the practice of law in a big firm is not for everyone. I tell people all the time, just because it's hard doesn't mean it's not worthwhile. Frankly, the things in life that are most worthwhile are often difficult, and you've really got to work at them. That's not a bad thing.

MICHAEL S. SOLENDER: I agree with all of that. Harold, can you tell us, you're in some ways on the front lines of this. The law schools are where there's been a law school crisis, It would be fair to say, in the last few years



— probably not hitting Yale as much as it's hitting other places — you can feel it. You've seen the cycle; you're in the cycle now. What do you think of this issue, from your interaction with the law students and younger people?

PROF. HAROLD HONGJU KOH: The law school students now are racked by fear, but you have to remind them of the reasons to go into this line of work. I give them three. The first is that people work 'til their mid-70s, 80s, and so they can have very long careers, and in the United States, there are many different legal paths that you can follow, and really fully experience lots of different kinds of professions, as we've done here. This is not like other countries' legal systems: where you're on one track for life and that's it.

Second is just the capacity to find teammates and soulmates. Everybody here who's had a rewarding career has had some group of people who are their band of brothers and sisters. You get together somewhere and you recall "that championship season," and there's no other feeling like it.

Third, I teach first-year procedure students who are one month in, and I encourage each student to do something in the first term, which is to go to the TRO [temporary restraining order] project and get a TRO. They sign up, and then they come to me, terrified, because they're about to go into court on behalf of a client. I say to them the quote from *Iron Man*: "They don't have anybody but you. And you, tonight, as their lawyer, will determine whether they're safe." It just brings it home to them in a very powerful way that being a lawyer is a duty of protection that they can give to someone that no one else can give them, whether they have the training or not.

Those three things are still very, very special. Whatever is their concern about long-term employability, everything else, is just beside the point at the end of the day.

ROBERT B. BARNETT: I'm amazed that you teach TROs at Yale. That totally shatters me! [LAUGHTER] There's the trade

school model, and then there's the Yale model. One of my best friends went to Yale and he ended up as general manager of WCBS, never took the bar. I remember the first time I met Ben, I said, "What did you major in at Yale Law School," and he said, "The legal aspects of typing." Not true.

PROF. HAROLD HONGJU KOH: TROs are *ex parte*, and not appealable! [LAUGHTER]

ERIC R. DINALLO: Ben made a good point privately that I want to just say publicly. It is important to make — if you're going to go to a law firm, you have to make connections with individuals. You have to make an effort to connect to future mentors, rabbis, etc. The big firms today are really big. It's easy to get lost. Debevoise is a slightly smaller place, pound for pound, so I see it, maybe, and I take it for granted.

One has to come in as a young lawyer and decide that, the chances of partnership are, by the numbers, small. You need to come out with some relationships, some kind of opportunity to go somewhere else, if that's what you're interested in.

I will say that one of the great benefits of a legal degree, if you're thinking about public service, is that people end up in higher positions in public service early on if they have a law degree. Whether it was Bob or Ben who said it — he said it's an incredible opportunity to go to these agencies and get a job.

I have a Master's degree in Public Policy. The reason I got the law degree was I came out of the Public Policy program and realized that the level of job I was going to get with a Master's was going to be ultimately long-term unsatisfying to me. I wanted to get a law degree. One of the stops would be, instead of going to a law firm, to think about government; not necessarily the prosecutor's office, but all these hundreds of agencies that need legal talent. You will come into areas with a lot more expertise than you would have otherwise had.

MICHAEL S. SOLENDER: Let me take this in a slightly different direction. We had an interesting conversation last night, and I want to explore it a little bit with the group here. It looks like, at least on the surface, that there's been progress for women and minorities in the profession. You can certainly see it at the law schools that we talked about: Yale, probably a majority of women at this point, as is Harvard. Women at law firms at the incoming levels are thriving and doing well. There are lots of women General Counsel and lots of women in-house. There are also minorities, increasingly, in these positions. Is that an illusion, or have we actually made progress in diversity? Tell us your vantage point.

MICHÈLE O. PENZER: We've made a little progress, but just a little. Frankly, there's a tremendous amount more that we can do as a profession. I recently read a report that indicated that of the professions that require graduate degrees, the legal profession is one of the least diverse at the end of the day. That really surprised me, because the report also said that if you ask firm leaders and General Counsel about their commitment to diversity and inclusion, the percentage of people who are absolutely committed to that is off the chart — it's close to 100%. Yet our ability to achieve a diverse community within our institutions, we're not doing nearly as well as we should. The reality is that, for example, the percentage of women partners at law firms has increased very slightly in the 20+ years that I've been practicing. It's gone up a little bit, but it's still under 20%, probably still around 17, 18%, across the board. That's very consistent, across almost all the big law firms.

MICHAEL S. SOLENDER: Now associates are 50/50, right?

MICHÈLE O. PENZER: Associates start out at about 50/50, yes.

MICHAEL S. SOLENDER: Somewhere along the line, something happens.

MICHÈLE O. PENZER: Yes, it's interesting. There's an assumption that women leave law firms at higher rates than men. The issue, though, is quite complex. Associate classes start out at about 50/50 and the attrition rates may actually be about the same. But often when women leave law firms, they are not looking to lateral to another firm. So, when firms recruit laterally at the mid- to senior-level associate range, the candidate pool is overwhelmingly male. When we look at where women are going, for the most part, it's not to another law firm. So the pool of lateral applicants is overwhelmingly male and, as a result, by the time you get to those senior levels, and law firms are looking at who is available to be promoted, it's predominantly men.

That's something that we need to work on as a profession – there's no doubt about it – because the fewer women and diverse attorneys that we have at senior associate levels, the fewer we will have in partnerships and in management positions. It just perpetuates the problem. Women or diverse attorneys coming in at the junior levels look forward to see who they can use as role models. There's a lot more that we can do as a profession to provide these role models.

MICHAEL S. SOLENDER: Bob, you've watched this, probably for years, and you've been at Williams and Connolly. From your vantage point, what has been done in terms of diversity; where is there to go; what have you seen?

ROBERT B. BARNETT: I agree with everything Michèle said. There's been a little progress, but not enough. We try; I think we all try. I'm generalizing now, which is always dangerous. Women and minorities have a lot of opportunities and they don't always find the work of law firms and the rigidness and the billable hours, especially in litigation, to be that attractive, unfortunately. You also try, but you never know. When I was running the Hiring Committee, I got a résumé from a guy named Harold Washington, Howard University, head of



the Black Students Union. He came in, and he was white. So you just never know. It's not like you're going to ask. We all know Vinnie Cohen, who was black.

We've got to do better. We've got to accommodate; we've got to outreach; we've got to understand the particular imperatives of different people. We have to mentor; we have to train. It's so important, particularly when you're in Washington, D.C. You've got to have a diverse law firm. But it's very hard – not to make any excuses at all – but we have to try harder, and we have to do it. We need a diverse population to make a law firm a good place to work, appealing to the clients, and a place where service is provided that is of universal value.

MICHAEL S. SOLENDER: Eric, you've been, again, at a lot of different institutions. You've probably wrestled with this issue because you lead these institutions and you're in the management consistently. How do you approach these issues? They're hard; how do you deal with it?

ERIC R. DINALLO: I'm on the Women's Task Force here, and first of all, the statistics that Michèle so ably stated are spot on. It's depressing. Actually, this is an area where demand can cause change, so clients

should feel very open and empowered to demand more diversity on their matters. It's the easiest way to rattle the economics of the firms, frankly. We have clients who will sometimes say that they want to spotlight a senior associate woman or a person of color and try to give them a big case, big exposure opportunity at a big financial services firm, for instance. That's very helpful. But even in the five years that I've been here – at least in the insurance industry – although I see this similarly in the banking space – I do more in-house work in the insurance industry – I see numbers of women migrating into the in-house positions – these are highly competent lawyers – for various reasons, there is definitely a flow that way. As Michèle said, once they're there, they're hard to recruit back to a law firm; most of them have established a life that they prefer. How to get them to stay at law firms is not that easy.

We're starting to now be aware of it; we see what the phasing is that Michèle described, and there might be ways of approaching that. You just have to pick your battles, by which I mean you identify women early who look like they have a lot of promise. You give them a lot of attention; you give them great opportunities; you have them bind with in-house counsel, so they feel kind of engaged and they feel like they're going to get the critical support that they need. Although, men have the same issues, and there's a certain blessing to this that I feel a huge amount of pressure around this, also, just as a father and a husband. But when all is said and done, it still is, pound for pound, more difficult for women. You can't just let statistics run; you have to actually pick your opportunities and really focus on them.

MICHÈLE O. PENZER: Clearly, it's all about opportunity. There's been a lot written lately about unconscious bias. As a profession, we are beyond conscious bias for the most part. Most institutions have great policies and programs in place. What happens, though, is that unconsciously, many people are more likely to select people like them for the next big matter, for the



next client pitch. They're more likely to give certain types of feedback, depending on who they're giving the feedback to. Those things are really important. It's important for all of us to be conscious about it, no matter what circumstance we're in, whether we're in a law firm, in-house, in the government — whatever it is — because that's a way that we can honestly, as a profession, make a lot of progress.

MICHAEL S. SOLENDER: Let me ask Harold a question here. When I'm teaching — and Ben's probably experienced this, too — I get a lot of students who come up to me during class, after class, and they'll say, "How do I become a General Counsel?" Or "How do I aspire to be a lawyer-statesman," to use Ben's term. "How do I get to those great positions in law?" I've heard Ben answer that, and I've always answered that saying, "You've got to do this and you've got to do that, but there's no magical formula." You must get that question. How do you answer questions, "I want to be great," from a student? What do you come back with?

PROF. HAROLD HONGJU KOH: The older I get, the more time I spend with students. Since I left the government, I try to spend an hour with each of my students, even in big classes. It takes a lot of time, but then you can start by saying to them, "Who

are you? Why are you in this profession?" It turned out my daughter was in business school, and she told me she had to think of a question about the course, just to have the right to go see the professor. When in fact you don't even want to know the answer to the question; you just want the professor to know who you are.

Once you've done this and found out where they're coming from, you find out a lot of things. For example, first-generation professionals are as much a minority within the school, because they feel that there's some sort of cultural code that they haven't cracked. What I find is when I'm actually understanding who they are, it's a lot easier to have a running conversation over a longer period of time about what their aspirations are. They check in and they send you emails, and since you understand what their long-term aspirations are, you can say, "This is a good or bad idea in terms of your long-term plan."

Most important, you can make certain kinds of connections for them. I was very touched recently because we have a student who had a criminal record because of a youthful indiscretion. He came to me at a certain point and said he really wanted to be a law clerk for a judge. It just wasn't clear how many federal judges would hire him. But there was a judge who happened to be sympathetic, and

I called him. I said, "If you pick this student, the first line of his résumé will be different than what it is now," and he thought about it, and he offered him the position. These are the moments that open doors, and these are not time-consuming on your part, but it makes a big difference. When we refer to our own mentors, usually they have said one little thing to us, or did one nice thing for us, that opened some kind of window. If you can do that, you're accomplishing something.

MICHAEL S. SOLENDER: Yes, I agree with that. Ben, slight variation on the question: we have in the group, here, a number of lawyers who are mid-career, who may be in firms, they may be in-house, they may be anywhere, and they, too, aspire to this goal that we've talked about. You get the same question. How do you answer that one, with somebody who's working in a firm, working in-house, working in government, and wants to take it to the next level — have that multi-dimensional career? What do you tell them?

BEN W. HEINEMAN, JR.: *Dead Poets Society — carpe diem.* I'm serious! If you look at the world, the number of problems, the number of interesting things going on, are infinite. Let's take inside folks — you're sitting in a big company, there are infinite ways in which you can participate. If you're a lawyer in a company, you can rise up on the lawyer track; you can rise up — at least in my company — and cross over to the business track. You can go from being a specialist to being a generalist. You can go to other companies.

There are all sorts of formal job opportunities or tracks that you can take. But you can also get involved in critical questions. If you're an environmental lawyer, there are various dimensions of climate change, and most companies should encourage their mid-level lawyers to get — whether it's through the ABA or through some think tank or something like that — to spend time on issues which are of direct importance to the company, but in a much broader,



indirect sort of way. I always encourage people to follow their heart and their dreams, and just grab a big problem — grab some big problems — and find a way to work on them and spend time thinking about it.

People are just dug into their foxholes, and they've got to get out — and break out. To me, it is really that. There are, again, about three or four different tracks that you can go through. But it is engaging with the world's big problems; it is *carpe diem*; it's engaging with the opportunities of the time, which are enormous! I don't know what else to say.

MICHAEL S. SOLENDER: Eric, you get these questions all the time.

ERIC R. DINALLO: That is great, fantastic advice. When I speak about this at NYU Law School or somewhere else, I tell the young people there that actually, the irony is the road to being a generalist is specific, singular accomplishments that people know about. It doesn't have to be worldwide, but even within your own community. There's a real merit when you're young, in picking something that you're passionate about and just doing it to somewhat of a disregard or putting aside, being a competent manager, for instance.

When I came to the DA's office, and you and I, Michael, sat across from each other, there was that one case that I focused on. I

knew that was, at that early part of my career, a career-defining case, and I'm sure that when Eliot Spitzer hired me, it was not because I had been a pretty good line prosecutor, but it was that one case. Then when I got there and I was the Bureau Chief and understood what the research analyst cases were about, I put everything else aside and spent 20 hours a day, reading and absorbing, and that's probably why Morgan Stanley hired me. When I was at Morgan Stanley, I worked very hard, almost to the exclusion of other issues, focusing on changing a certain regulatory approach there with my friend Jim Cusick, in the audience. And then again, back into government — I'll be always associated with AIG, but that was one matter where I literally put aside managing the agency — it was a really important thing that had to be focused on by the head of the agency at the time.

There is a rhythm there that generally will advance your principles, platform, if you understand it. It can be at a small law firm, with just one witness — but get that one witness absolutely right, that one transaction absolutely right. That's how you build, in my opinion, a reputation when you're young. Frankly, over-preparation is not a bad idea when you're 26 years old.

BEN W. HEINEMAN, JR.: I was a child of the '60s; Bob was a child of the '60s; maybe a few of you were. We believed we could change the society. We were wrong, but we were inspired to really go after it. Very few of us thought about companies or law firms; most of us thought about changing the world. That was the ethos. I deal with it all the time, and obviously others — Michael and, of course, Harold does. Law students today are much more confused; they are much more timid. They are not sure what they want to do. They're not willing to take the risks. That ethos, I'm not sure how we change it or what we do, but that is a big inhibitor. They're not confident about what to do or whether to take risks that deal with the big issues. Everyone in this room's collective responsibility is to challenge and inspire young people.

One last thing, when I went to law school, half the professors were activists. They were public intellectuals; they were role models; they were really interesting people. Excepting Harold, I'm not sure that's as true anymore. We've now got the scholarly model, and everybody's writing their learned articles and their books; they're not out struggling, tilting against windmills in the world. You've got to do both. That was terribly important to all of us at that time, and there were lots of model careers out in the society in the '60s, but also as evidenced by activist law professors — the public intellectuals.

To some extent, we also have to model for people; we have to show them that there really are alternatives and there are ways to grapple with these big things, to inspire them either directly or indirectly.

MICHAEL S. SOLENDER: I'd like to ask you — this advice would probably cost a thousand dollars an hour, but I'm going to give the audience the benefit of the subject.

ROBERT B. BARNETT: Twelve-fifty!

MICHAEL S. SOLENDER: Yes! [LAUGHTER] I'm underselling — more than a thousand dollars! We'll give a freebie to the audience here. What would you say to people in these positions? You get these questions all the time. How do you do it?

ROBERT B. BARNETT: I'll give you the facetious answer and then I'll give the serious answer. Two answers: I've discovered, late in life, the solution to all this — making money, working hours, being career-focused. It's called "grandchildren." [LAUGHTER] I am blessed with two and it has changed my life.

I agree totally with what Ben said. Do other things — whether it's with your religion or sports or family or picking a big problem — try to do broader things and bigger things and other things, and don't only be focused



on the day-to-day and the minutiae and the billing of hours. You know the old saying — when you're on your deathbed, you don't say, "Boy, I wish I'd gone to the office more." That is so true, I'm convinced; and so what Ben said, as everything Ben says, was wise.

MICHAEL S. SOLENDER: Let me see if there are any more questions from the audience. Yes, please.

[QUESTION FROM AUDIENCE:]
[Question about compliance.]

MICHAEL S. SOLENDER: I'm going to let Ben answer this one, too. We always say there are four pillars of compliance — one is "get the policy right" in the organization — get the right culture, and Ben's been really vocal about that. Get the culture in there, get it recorded, get it there. Train people in the culture. Survey to make sure the culture is there and have a culture of accountability. If you have those four pillars, you're going in the right direction. I learned all that from this guy.

BEN W. HEINEMAN, JR.: Let's talk afterwards, a long conversation, but obviously, the clichés are prevent, detect, and respond. In a corporation, the power is hierarchical. If the CEO cares, and integrity is something he measures his business

leaders by, and makes it integrated into the business processes and creates the culture in all sorts of ways which we can talk about later, you have to create the culture that reaches down to the shop floor in western China; it's not just the guys yapping at headquarters. It is a deep cultural creation where it's operational and not just lip service. That sums it up.

It's prevent, detect, and respond with the CEO at the top driving it, and meaning it, and disciplining people. One of the most important things that ever happened was disciplining senior officers for acts of omission where the culture they created allowed things to happen. They didn't do it themselves, but bad things happened on their watch over time, with a lot of people. You fire them — the message goes out. You speak at the officers' meeting, and you say, "Look, one bad apple is not going to blight your career, but you create a bad culture, and you're gone."

MICHAEL S. SOLENDER: Another question over here? Yes.

[QUESTION FROM AUDIENCE:]
[Question about building a great company]

MICHAEL S. SOLENDER: Bob, you get that question a lot from companies. How do you know who to send where?

ROBERT B. BARNETT: There's no magic; you've got to often use recruiters; it's interviewing. It's looking at what all these people have talked about, which is a universality of experience; an ability to do the fundamentals of writing and advocating and research and making judgments; a willingness to tell truth to power; and interpersonal skills, so they fit within the culture of your company.

You can do that often by connections that people have. Who have you used as outside counsel? Who have you been impressed with when you've gone to conferences and heard people speak? I don't know that I know the magic answer, but I know those are the things that you want to look for and find.

MICHAEL S. SOLENDER: Let me just say in conclusion, here — the question I posed at the beginning is whether we still have the lawyer-statesmen, the great lawyers; this panel answered that question. They are certainly there today. We posed the question as to whether they will be there in the future; there's a lot to think about there, a lot of food for thought. But I think you'll all agree with me, this has been an extraordinary panel, and I thank them all for doing this. I'm very grateful. [APPLAUSE]

JACK FRIEDMAN: Before we finish, I wanted to ask a question that we traditionally ask the Guest of Honor at each program: In the five minutes a month that you have free, what do you like to do with your time?

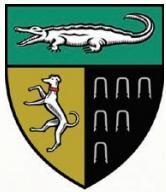
MICHAEL S. SOLENDER: I like to spend time with my children. I like to do everything and watch them grow; travel with them. That's where my priority is whenever I have a free moment.

JACK FRIEDMAN: I would like to thank you and all of the Panelists for sharing your expertise and wisdom, and thank the audience for their attendance.



Prof. Harold Hongju Koh

Sterling Professor of International Law, Yale Law School



Harold Hongju Koh is one of the country's leading experts in public and private international law, national security law, and human rights.

He began teaching at Yale Law School in 1985 and served as its fifteenth Dean from 2004 until 2009.

From 2009 to 2013, he served as the 22nd Legal Adviser of the U.S. State Department, for which he received the Secretary of State's Distinguished Service Award; and from 1998 to 2001, he served as U.S. Assistant Secretary of State for Democracy, Human Rights and Labor.

Professor Koh has received fifteen honorary degrees and more than thirty awards for his human rights work, including awards from Columbia Law School and the American Bar Association for his lifetime achievements in international law.

He has authored or co-authored eight books, published more than 180 articles, testified regularly before Congress, and litigated numerous cases involving international law issues in both U.S. and international tribunals.

He is a Fellow of the American Philosophical Society and the American Academy of Arts and Sciences; an Honorary Fellow of Magdalen College, Oxford; and a member of the Council of the American Law Institute.

He holds a B.A. degree from Harvard College, B.A. and M.A. degrees from Magdalen College, Oxford University, where he was a Marshall Scholar, a J.D. from Harvard Law School, and served as a law clerk for Justice Harry A. Blackmun of the United States Supreme Court and Judge Malcolm Richard Wilkey of the U.S. Court of Appeals for the D.C. Circuit.

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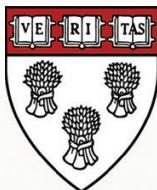
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Ben W. Heineman, Jr.

Former Senior Vice President and General Counsel, General Electric Company; Senior Fellow at Harvard's Law and Government Schools



Ben W. Heineman, Jr. was GE's Senior Vice President-General Counsel from 1987-2003, and then Senior Vice President for Law and Public Affairs from 2004 until his retirement at the end of 2005. He is currently Senior Fellow at Harvard Law School's Program on the Legal Profession and its Program on Corporate Governance, Senior Fellow at the Belfer Center for Science and International Affairs at Harvard's Kennedy School of Government and Lecturer in Law at Yale Law School. A Rhodes Scholar, editor-in-chief of the *Yale Law Journal* and law clerk to Supreme Court Justice Potter Stewart, Mr. Heineman was assistant secretary for policy at the Department of Health, Education and Welfare and practiced public interest law and constitutional law prior to his service at GE. His book, *High Performance with High Integrity*, was published in June 2008 by the Harvard Business Press. His new book, *The Inside Counsel Revolution: Resolving the Partner-Guardian Tension*, will be published in 2016 by Ankerwycke, the trade imprint of the American Bar Association. He writes and lectures frequently on business, law, public policy, and international affairs. He is also the author of books on British race relations and the American presidency.

He is a member of the American Philosophical Society, a fellow of the American Academy of Arts and Sciences, a member of the National Academy of Science's Committee on Science, Technology and Law. He is recipient of the *American Lawyer's* Lifetime Achievement Award and the Lifetime Achievement Award of *Board Member Magazine*. He was named one of the top 50 Innovators in Law in the Past 50 Years by the *American Lawyer*, one of America's 100 most influential lawyers by the *National Law Journal*, one of the 100 most influential individuals on business ethics by *Ethisphere Magazine* and one of the 100 most influential people in corporate governance by the National Association of Corporate Directors. He serves on the boards of Memorial Sloan Kettering Cancer Center (chair of patient care committee), the Center for Strategic and International Studies (chair of program committee), Transparency International-USA and the Committee for Economic Development. He is a member of the board of trustees of Central European University. He is a graduate of Harvard College (BA-high honors in history), Oxford University (B.Litt-political sociology), and Yale Law School (JD)

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breadth: more than 400 courses, seminars, and reading groups that together reflect the remarkable range of the faculty's expertise and interests.

Law students have many opportunities for intellectual engagement with faculty and classmates. Over 240 of our courses and small group seminars have fewer than 25 students enrolled. First-year sections have 80 students, and opportunities to work directly with faculty members abound. For example, all first-year students may join intimate (fewer than 15 students), faculty-led reading groups on topics ranging from cyberlaw to climate change to terrorism. Harvard's

extensive resources and collaborative approach create unmatched opportunities to prepare for leadership in public service, private practice, the judiciary, academia, business, or government.

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Eric R. Dinallo

Partner, Debevoise & Plimpton LLP

Debevoise & Plimpton

Eric R. Dinallo is a partner in the firm's New York office and a member of the Financial Institutions Group. A recognized practitioner in *Chambers USA* (2014), Mr. Dinallo represents clients throughout the financial services sector and provides counseling on a broad range of matters, including government and internal investigations, enforcement actions, litigation and compliance matters, and regulatory and strategic legal advice on mergers and acquisitions and other corporate transactions.

Mr. Dinallo has a broad range of public and private sector experience. He served as the New York State Superintendent of Insurance (2007–2009), where under his leadership the department became a national model on insurance regulation and a respected voice on the industry's role in the financial system. Mr. Dinallo worked with the United States Treasury Department, the Federal Reserve Bank of New York and others in the restructuring of financial services giant AIG, for which he was named a "Dealmaker of the Year" by *The American Lawyer* in 2009. He earned national acclaim for leading successful negotiations between developers and insurance companies over the World Trade Center site, and in 2008 he received the "Esprit de Corps Award" from the National Association of Insurance Commissioners for accomplishments as an "ambassador for state-based insurance regulation."

Prior to his term as Superintendent, Mr. Dinallo was the General Counsel of Willis Group Holdings (2006–2007), supervising the legal, compliance, and internal audit departments. He was the Managing Director, Global Head of Regulatory Affairs of Morgan Stanley (2003–2006), where he designed and led top-to-bottom reviews of conflicts and business practices, and achieved major shifts in the firmwide regulatory strategy. Mr. Dinallo served as Chief of the Investment Protection Bureau in the Office of Attorney General Eliot Spitzer (1999–2003). He also served as an Assistant District Attorney in the New York County District Attorney's office (1995–1999), where he had primary responsibility for securities fraud and white collar and insider trading investigations and trials.

Mr. Dinallo has spent significant time in public service. He was a primary election candidate for New York State Attorney General in 2010. During the campaign, Mr. Dinallo received endorsements from Crain's New York Business and the New York Daily News, and was lauded for his performance in *The New York Times*/NY1 News primary debate. Following the election, he served as Co-Chair of the Economic Justice transition committee for New York Attorney General Eric Schneiderman. Previously, he served as Co-Chair of the Criminal Justice transition committee for Andrew Cuomo in 2006.

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Debevoise & Plimpton LLP is a premier law firm with market-leading practices, a global perspective and strong New York roots. Our clients look to us to bring a distinctively high degree of quality, intensity and creativity to resolve legal challenges effectively and cost efficiently. Deep partner commitment, industry expertise, and a strategic approach enable us to bring clear commercial judgment to every matter. We draw on the strength of our culture and structure to deliver the best of our firm to every client through true collaboration.

Debevoise regularly counsels special committees and boards of directors on the most

complex, sensitive, and important matters they face, including going-private and other conflict-of-interests transactions, corporate governance matters, internal investigations, disclosure matters, and responding to stockholder litigation and regulatory actions. These situations are not only critically important to the company, they also put directors' reputations on the line. To help directors navigate safely through the most challenging environments, Debevoise draws on its strengths across the firm. Corporate transactional lawyers, disclosure lawyers, litigators, and regulatory lawyers work closely together to construct sound, thoughtful processes that enable special committees and

boards of directors to address difficult situations in a highly effective manner.

By any measure, Debevoise is among the leading law firms in the world. Nearly 85% of our partners are recognized by *Chambers*, *The Legal 500* or *IFLR*. The firm was also the winner of *The American Lawyer's* "10-Year A-List," a ranking of the law firms who have earned the highest cumulative score on the A-List since its inception. Approximately 650 lawyers work in eight offices across three continents, within integrated global practices, serving clients around the world. Our lawyers prioritize developing a deep understanding of the business of our clients.



Michèle O. Penzer

Managing Partner (New York),
Latham & Watkins LLP

LATHAM & WATKINS LLP

Latham & Watkins LLP

Latham & Watkins is a global law firm with approximately 2,200 lawyers in offices located in Asia, Europe, the Middle East and the United States. The firm's more than 60 international practice groups and industry teams serve clients in a range of transactional, litigation and regulatory areas. Consistent rankings in the top tier by leading legal and business publications such as *The American Lawyer*, *Financial Times*, *mergermarket*, *Chambers and Partners*, *The Legal 500* and *Asia Legal Business* demonstrate Latham's global strength and deep industry expertise.

Michèle Penzer is the Managing Partner of the New York office of Latham & Watkins. Ms. Penzer's practice focuses primarily on the representation of commercial and investment banks, as well as borrowers, in leveraged finance transactions, including acquisition financings, project financings, other senior secured lending transactions and restructurings.

Profile

Ms. Penzer is the former global Co-chair of the Banking Practice, a former member of the firm's Executive Committee and former chair of the firm's Diversity Committee and Associates Committee.

Ms. Penzer is recognized as a leading attorney for U.S. banking and finance in *Chambers Global* 2015 and *Chambers USA* 2015.

Experience

Ms. Penzer handles a variety of transactions for financial institutions, including:

- Bank of America
- Credit Suisse
- Merrill Lynch
- Goldman Sachs
- Barclays
- JP Morgan Chase
- Citibank
- Wells Fargo

As well as companies, including:

- Scientific Games
- Eastman Kodak

Thought Leadership

- Structuring Holding Company Energy Loans
- Shari'ah-Compliant Financings: New Opportunities for the U.S. Market
- Islamic Finance in the United States
- Special Issues for M&A Deals in the Energy Sector

Recognition Highlights

Sources depict her as "terrific and very commercial." *Chambers USA* 2015

Described as "responsible and commercial in decisions." *Chambers Global* 2014

Described as "having an impressive list of lenders and borrowers in leveraged finance transactions." *Chambers USA* 2012

Recognized by *Chambers Global*, *Chambers USA* and *The Legal 500 US for Banking and Finance*

Latham's lawyers use the firm's experience and resources to help clients handle complex business issues ranging from enterprise-altering transactions to strategic corporate initiatives to high-stakes, "bet the company" litigations. The firm's public and private company clients operate in a wide range of industries, and span the gamut from start-ups to Fortune 500 companies. In a world of ever more complex transactions and disputes and an ever more complex regulatory environment, companies and financial institutions look to Latham as dedicated and decisive counsel to achieve successful outcomes.

Latham takes pride in the firm's culture of teamwork, collegiality, and strong

commitment to quality and professionalism that have helped it succeed for more than 80 years. In addition, the firm has a long-standing commitment to providing *pro bono* legal services, financial support, and volunteer time to those most in need. Since 2000, Latham has provided more than U.S.\$1 billion in free legal services to the disadvantaged and the nonprofit sector, totaling more than 2.5 million *pro bono* hours.

From a global platform of offices in the world's major financial, business, and regulatory centers, Latham & Watkins focuses on providing a collaborative and solutions-based approach to client service. For more information, visit www.lw.com.



Robert B. Barnett

*Partner & Senior Member,
Executive Committee
Williams & Connolly LLP*

WILLIAMS & CONNOLLY LLP®

Williams & Connolly LLP

In an era of global megafirms, Williams & Connolly LLP is a unique institution. Although the firm handles cases all over the world, the firm's approximately 275 partners and associates are all based in a single office in Washington, D.C. With one exception, all of the firm's partners over the last 25 years have been trained at the firm and promoted from within. As a result, Williams & Connolly has a collaborative and collegial culture unlike that of any other law firm.

Williams & Connolly has long been regarded as one of the nation's premier law firms for litigation, and litigation is the firm's primary focus. Founded in 1967 by legendary litigator Edward Bennett Williams, the firm was initially best known for defending individuals in criminal and civil matters. The firm represented Oliver North before Congress and at trial over his

Robert B. Barnett has a diverse practice representing national and international corporations and individuals on a wide variety of matters.

Mr. Barnett represents major corporations in litigation matters, corporate work, contracts, crisis management, transactions, government relations, and media relations. During his thirty years of practice, he has represented clients before almost every executive department and administrative agency in Washington. His clients have included McDonald's Corporation, General Electric, Comcast, JM Family Enterprises, Toyota, Deutsche Bank, MacAndrews & Forbes, Revlon, the NBA, Southeast Toyota, and Toll Brothers, among others.

Mr. Barnett is one of the premier authors' representatives in the world. His clients have included Barack Obama, Bill Clinton, George W. Bush, Hillary Rodham Clinton, Laura Bush, Bob Woodward, Sarah Palin, Dick Cheney, Jill Biden, Lynne Cheney, Alan Greenspan, James Patterson, Katharine Graham, Tim Russert, Barbra Streisand, George Will, Khaled Hosseini, Paul Ryan, James Carville, Mary Matalin, William Bennett, Mary Higgins Clark, Cokie

involvement in the Iran-Contra scandal. The firm also successfully represented President Bill Clinton in the first impeachment trial of a sitting president in over a century. More recently, the firm represented the late Senator Ted Stevens at trial on charges of making false statements; the indictment was dismissed after it was revealed that the government had engaged in prosecutorial misconduct.

Williams & Connolly is now equally well-known for handling "bet-the-company" civil litigation at the trial and appellate levels. The firm serves as national coordinating and trial counsel for Merck in litigation concerning the anti-inflammation drug Vioxx. The firm has a thriving intellectual property practice, which has successfully defended patents protecting products with hundreds of millions of dollars in annual sales. The firm has also presented oral argument to the Supreme Court four times in the last three years. The firm's

Roberts, several former U.S. Secretaries of State, numerous U.S. Senators, Tony Blair of the United Kingdom, Queen Noor of Jordan, the Prince of Wales, Benazir Bhutto of Pakistan, and many others, including journalists, novelists, business leaders, sports stars, politicians, and others.

He is also one of the leading representatives of television news correspondents and producers. His clients include Brian Williams, Lesley Stahl, Dr. Sanjay Gupta, Steve Doocy, Christiane Amanpour, Brit Hume, Andrea Mitchell, Rita Braver, Susan Spencer, Brian Kilmeade, Gwen Ifill, David Gergen, Bill Plante, Chris Jansing, Neil Cavuto, Cynthia McFadden, anchors in many major television markets, and producers on virtually every major broadcast on network and cable television.

Mr. Barnett also represents former government officials in conjunction with their transitions to the private sector. His clients have included Bill Clinton, George W. Bush, Madeleine Albright, Alan Greenspan, Ray Kelly, Karl Rove, Ben Bernanke, Dan Quayle, James Baker, Larry Summers, Donna Shalala, and many former Senators and Congressmen.

corporate clients include major global companies from virtually every industry, including ADM, General Electric, Pfizer, Sony, Sprint Nextel, and UBS. In addition, the firm has represented numerous law firms and accounting firms in professional responsibility and other litigation; *The Washington Post* recognized Williams & Connolly as the firm that other law firms "turn to when they're in trouble."

Beyond litigation, the firm also assists companies, chief executives, authors, news correspondents, and sports figures in transactional matters. In recent years, the firm has represented President Obama; former President Clinton; former President George W. Bush; Secretary of State Hillary Rodham Clinton; former British Prime Minister Tony Blair; the late Senator Ted Kennedy; former Federal Reserve Chair Alan Greenspan; First Lady Michelle Obama; and NBC news anchor Brian Williams.