

# THE LAW & ROLE OF IN-HOUSE COUNSEL

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**Purpose.** The purpose of the course is to explore the role of lawyers who devote their full time to focusing on the legal risks of organizational clients that are either a business organization, non-profit, government or NGO (or group of related such organizations). By the end of the course you should be able to understand how to predict and prevent potential problems for such organizations and have a grasp of strategies to evaluate, avoid, mitigate, ameliorate, remedy, and resolve such risks.

**Course Material.** There is no case or text book. The material below will be your readings for the course and discussed in the week indicated. At a few points we will use YouTube videos in class: a discussion among several in-house counsel, and a discussion by an entrepreneur (who has a law degree) and his in-house counsel, both to lead to in class discussion and analysis of issues those videos raise.

**Classes.** This class is scheduled to meet for 2 academic hours per week, on Tuesday at 2:00 PM

**Attendance Policy.** The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly scheduled classes. A student enrolled in a two-credit course may thus miss no more than two 100-minute class sessions (in other words, two regularly scheduled classes).

I will provide sign-in sheets for each regularly scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by failing to sign in, you will be administratively withdrawn from the course. No prior notice may be given, and you will receive notification from the Office of Academic Records indicating the withdrawal. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not

limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

If you believe you must be absent from class please notify me at the email above, and if for more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. Accommodations will be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception made to the Office of Student Affairs must be accompanied with appropriate documentation.

**Lateness & Early Departure:** Students are expected to be on time to class and to stay until it is dismissed. However, it is better to come to class late or leave early than not at all. You may walk in late or leave early if you have a good reason, as long as you share the reason with me and don't abuse this privilege, and be sure to sign the sign in sheet.

**"TWEN" (The West Education Network):** I have set up a course page for this class on TWEN. TWEN gives me a quick way to reach all of you with any announcements, Syllabus changes, handout materials, interesting links, etc. It also gives me a way to extend class discussion beyond the classroom hours. *You must register for this course on TWEN by Noon on August 22, 2016*

**Learning Outcomes:** At the completion of this course we expect the following learning outcomes:

1. Understanding of many of the sources of substantive law and practice governing organizations and their compliance responsibilities.
2. Understanding the tenor and content of those substantive rules.
3. Understanding of the rules of privilege, legal and ethical responsibilities for in-house counsel, both in terms of their substance and also their procedural attributes.
4. Understanding of the processes by which substantive rules for organizations and their counsel are created, modified, implemented, enforced and complied with. This will include state v. federal, legislative v. regulatory v. judicial v. reputational, among other aspects.
5. Identifying, researching, analyzing and writing about problems that organizations and their in-house counsel have faced, are facing, or are likely to face.
6. Analysis of both prophylactic and remedial tools and alternatives, including counseling, negotiating and advocating in a variety of law making environments and the role of technology in these activities.

7. Understanding how to deal with various organizational constituencies (employees, officers and directors), and counter parties (suppliers, customers and governmental actors),

**Expected Student Workload:** The American Bar Association requires that you spend at least four hours per week outside of class studying for this 2-credit course. This is an average amount of time required for out of class work per week over the course of the semester. The time you will spend throughout the semester reviewing the readings below and researching, drafting and revising the final paper for this course will satisfy (and likely exceed) that time commitment. This is in addition to the two hours of class time.

**Final Grade for the Course:** The final grade for the course will be determined principally by the final paper. Class participation may influence the final grade, but only as a tipping factor when the paper admits of two possible grad

**Final Paper:** The principal grading exercise (except for the role of class participation above) will be a final paper. It should be between 15-20 pages long. Failure to write at least 15 pages may result in a failing grade. Writing more than 20 pages will result in a grade reduction up to 25 pages, after which failure is possible. The paper should be on a topic of the student's selection that relates to

the topics identified in the syllabus below or otherwise relates to the law and role of in-house counsel.

To assure that the student and instructor are agreed on the scope and relevance, each student must submit a **one page summary** of the proposed topic and approach of that student's paper. The summary must be submitted electronically to the gmail address above as a Microsoft Word or Apple Pages compatible file. **The deadline for submission of this summary of the proposed paper is midnight Eastern Time, Saturday October 8, 2016.** The proposal will be returned with my comments by Sunday October 16, and hopefully sooner.

Subject to discussion in our first session, the **final paper** will be due by **11:59 PM ET November 30, 2016,** to be submitted electronically as above. Papers that are late will be subject to a grade reduction and more than 48 hours late, failure. Final papers will not be returned.

Because the papers are on different topics it is fair to ask: how will they be compared (i.e., graded). Factors to be evaluated include: is it well written? Are the grammatical basics there and does the paper reflect thoughtful and comprehensive analysis? Does it explore an interesting or novel question? Is the research for an answer thoughtful and complete? Simple regurgitation of material covered by the

course (whether orally in class or in writing in the materials below) will be less well regarded.

As to form (page and type size, etc.) papers should comply with the formatting standards identified in 22 N.Y.C.R.R. 600.10 (a), subparts 3, 4, 6, 10 and 11.

Noncompliance may result in a lower grade, or if it results in illegibility (like the App. Div. justices, I am old enough to be presbyopic) return for prompt reformatting, or both.

**Optionally**, students are encouraged (but not required) to submit a **draft** of their proposed paper for my comment not later than **6 PM November 11, 2016**. I expect to return drafts with my comments within a week (hopefully sooner) of receipt.

**Computer Policy:** Computers (inclusive of laptops, tablets, “smart” phones and other similar devices) are to be used during class for taking notes or conducting real time research into a matter being actively discussed in class and no other purpose. They are not to be used to “surf the net” or send email or instant messages. Violations of this rule may lead to you being prohibited from using a computer during class sessions for the remainder of the semester.

**Communications:** The best way to communicate with me is by email at mlampert@gmail.com. I will get back to you promptly, usually within an hour and in all events within not more than 24 hours. For at least two of the weeks between classes I will not be in the Eastern Time Zone. While I do not maintain regular office hours, if you need to speak with me in person, we can set up an appointment either before (preferred) or after (possible but second choice) class

## **CLASS TOPICS AND READINGS;**

### **INTRODUCTION (week 1)**

An overview of the degree to which lawyers are employed by business, governmental and non-profit organizations to provide them legal advice for a salary (and perhaps bonus) instead of any other fee arrangement. A foreshadowing of the effect of this on their independence, perceived independence, licensing, and their exposure to liability. Questions of in house counsel's role as clients, as lawyers, and questions of who acts for the organization.

#### **Materials:**

-Excerpt from The Inside Counsel Revolution by Ben Hieneman, former GC, GE.

<https://corpgov.law.harvard.edu/2016/03/29/the-inside-counsel-revolution/>

-GC Growing influence:

<http://www.legalweek.com/sites/legalweek/2016/07/27/gcs-report-growing-influence-in-top-companies-over-the-last-five-years/?kw=GCS%20report%20growing%20influence%20in%20top%20companies%20over%20the%20last%20five%20years&cn=20160727&pt=Daily%20Alert&src=EMC-Email&et=editorial&bu=Legal%20Week&slreturn=20160627075350>

-The Role of In-House Lawyers, San Francisco Attorney (Summer 2008),

[http://www.sfbar.org/forms/sfam/q22008/in\\_house\\_lawyers.pdf](http://www.sfbar.org/forms/sfam/q22008/in_house_lawyers.pdf)

- Top Ten Things I Know Now that I Wish I Knew Then (B. Bulacan, Assoc. of Corp Counsel)

<http://www.acc.com/legalresources/publications/topten/wikntiwikt.cfm?makepdf=1>

-Advice to Law Firm Partners Considering Going In-House,

<http://www.inhouseblog.com/going-in-house/>

-ABA Mentoring New Lawyers- In House Counsel

<http://www.americanbar.org/publications/tyl/topics/in-house-counsel.html> (esp.

Other Side of Paradise; Six Rules; Attorneys on the Inside -Functions and Goals)

-How the financial crisis changed the role of in-house lawyers

<http://www.legalweek.com/legal-week/blog-post/2418047/how-the-financial-crisis-has-changed-the-role-of-in-house-lawyers>

-Management expectation:

<http://www.corpcounsel.com/id=1202763473394/Building-a-Founders-Mentality-Into-Your-Legal->

[Department?kw=Building%20a%20%27Founder%27s%20Mentality%27%20Into%20Your%20Legal%20Department&cn=20160725&pt=Afternoon%20Update&src=EMC-](http://www.corpcounsel.com/id=1202763473394/Building-a-Founders-Mentality-Into-Your-Legal-Department?kw=Building%20a%20%27Founder%27s%20Mentality%27%20Into%20Your%20Legal%20Department&cn=20160725&pt=Afternoon%20Update&src=EMC-)

[Email&et=editorial&bu=Corporate%20Counsel&slreturn=20160626112436](http://www.corpcounsel.com/id=1202763473394/Building-a-Founders-Mentality-Into-Your-Legal-Department?kw=Building%20a%20%27Founder%27s%20Mentality%27%20Into%20Your%20Legal%20Department&cn=20160725&pt=Afternoon%20Update&src=EMC-Email&et=editorial&bu=Corporate%20Counsel&slreturn=20160626112436)

## **THE ROLE OF IN-HOUSE COUNSEL IN COMPLIANCE: CRIMINAL AND GOVERNMENTAL**

(weeks 2 and 3)

The role of lawyers as law enforcers, keeping the organization from violating the rules. The risk reward structure of private law violation (efficient breach), regulatory violations and criminal exposure. Who decides? The role of management, levels of management and boards. Prophylactic policies, training

and effective control mechanisms to prevent and identify wrongdoing. What does Sarbanes Oxley esp. section 205, say about handling this in terms of reporting and retaliation?

When, inevitably, something wrong has happened, factors to consider in counseling. Risks to individuals and the enterprise and how to balance them.

When does self reporting, or confession and mitigation make sense? When should outside counsel be called?

Class will discuss AML & the wire act based on handouts.

Materials:

-The Significance of the Sarbanes-Oxley Whistleblower Provisions, Daniel P.

Westman, *The Labor Lawyer*, Volume 21, Number 2, Fall 2005

<http://www.mofo.com/~media/Files/Publications/2005/10/The%20Significance%20of%20the%20Sarbanes->

[0of%20the%20Sarbanes-](http://www.mofo.com/~media/Files/Publications/2005/10/The%20Significance%20of%20the%20Sarbanes-)

[Oxley%20Whistlebl\\_/Files/The%20Significance%20of%20the%20Sarbanes-](http://www.mofo.com/~media/Files/Publications/2005/10/The%20Significance%20of%20the%20Sarbanes-)

[Oxley%20Whistlebl\\_/FileAttachment/05FallLaborLawyer.pdf](http://www.mofo.com/~media/Files/Publications/2005/10/The%20Significance%20of%20the%20Sarbanes-)

## PREVENTION:

- Preventing Discrimination and Harassment In The Workplace

<http://www.acc.com/legalresources/quickcounsel/pdahitw.cfm>

-Sample Codes of Conduct, Apple; Walmart (DO NOT READ IN FULL- Skim with a focus on 2 matters: comparative style, and comparative topics)

[http://files.shareholder.com/downloads/AAPL/0x0x443008/5f38b1e6-2f9c-4518-b691-13a29ac90501/business\\_conduct\\_policy.pdf](http://files.shareholder.com/downloads/AAPL/0x0x443008/5f38b1e6-2f9c-4518-b691-13a29ac90501/business_conduct_policy.pdf)

<http://media.corporate->

[ir.net/media\\_files/IROL/11/112761/corpgov/Ethics%20Current.pdf](http://media_files/IROL/11/112761/corpgov/Ethics%20Current.pdf)

## IS AN OUNCE OF PREVENTION WORTH A POUND OF CURE?

-The Costs and Benefits of Regulatory Cost-Benefit Analysis

<http://www.complianceweek.com/blogs/boards-governance/the-costs-and-benefits-of-regulatory-cost-benefit-analysis>

-Cost Effectiveness and Legal Compliance: An Analysis of Securities Law Compliance for the

Start-Up Company [esp. Conclusion]

<http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1017&context=chtl>

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-Understanding the Costs of Compliance [Gartner Group on Stanford web site]

[http://logic.stanford.edu/poem/externalpapers/understanding\\_the\\_costs\\_of\\_c\\_138098.pdf](http://logic.stanford.edu/poem/externalpapers/understanding_the_costs_of_c_138098.pdf)

-Coming Clean and Cleaning Up: Does Voluntary Self-Reporting Indicate Effective Self-Policing?

<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1490&context=facpub>

## CRISIS MANAGEMENT

-The Emerging Crisis Management Practice <http://www.lawdragon.com/feature-articles/the-emerging-crisis-management-practice/>

-The Crisis Management Lesson from Toyota and GM <https://hbr.org/2014/03/the-crisis-management-lesson-from-toyota-and-gm-its-our-problem-the-moment-we-hear-about-it>

## UPJOHN WARNINGS

-Scruples: Upjohn Warnings (Litigation Magazine, ABA 2016)

[http://www.americanbar.org/content/dam/aba/publications/litigation\\_journal/spring2016/upjohn-warnings.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/litigation_journal/spring2016/upjohn-warnings.authcheckdam.pdf)

-Litigation: Upjohn warnings and external consultants

<http://www.insidecounsel.com/2013/04/18/litigation-upjohn-warnings-and-external-consultant>

## YATES MEMO

-The Memo: <https://www.justice.gov/dag/file/769036/download>

-Her assessment 6 months on:

<http://blogs.wsj.com/riskandcompliance/2016/05/10/yates-assesses-effects-of-yates-memo/>

-Private practitioners: <http://www.corpcounsel.com/id=1202759565708/Yates-Memo-an-Affront-to-Privilege-Expert-Says-at-NYC-Event>

-Déjà vu? <http://www.chadbourn.com/clientalerts/2008/dojrevises>

-Yates memo and Upjohn warnings? <http://0->

[www.law360.com/libweb.hofstra.edu/articles/819250/yates-memo-driving-wedge-between-companies-and-workers](http://www.law360.com/libweb.hofstra.edu/articles/819250/yates-memo-driving-wedge-between-companies-and-workers)

## FCPA IMPLEMENTATION

-Guidelines: <http://www.corpcounsel.com/id=1202754732966/DOJs-New-Guidance-for-Cooperation-Credit-in-FCPA-Resolutions>

-Practice: <http://www.corpcounsel.com/id=1202759879611/Key-Lessons-for-GCs-From-Two-FCPA-Cases?mcode=0&curindex=0&curpage=ALL>

## **LARGE SCALE CIVIL PROBLEMS, IS THE SCOPE THE SAME? (Week 4)**

Did GM's counsel hard line serve the company? Did Merck's? Dealing with the press. Off label drug marketing – a class discussion

Materials:

-- At Hearing on G.M. Recall, Mary Barra Gives Little Ground [GM GC's defective part strategy] (NY Times July 18, 2014)

[http://www.nytimes.com/2014/07/18/business/senate-hearing-on-general-motors.html?\\_r=0](http://www.nytimes.com/2014/07/18/business/senate-hearing-on-general-motors.html?_r=0)

-Turnaround Artists (Dechart)[Merck then GC's Vioxx Strategy]

[http://careers.dechert.com/files/RepresentativeExperience/311bf4f5-c96a-4004-](http://careers.dechert.com/files/RepresentativeExperience/311bf4f5-c96a-4004-84cd-)

[024a72eac723/Presentation/ceRepresentativeExperienceFile1/Dechert\\_AmLaw\\_Litigation\\_Dept\\_2008.pdf](http://careers.dechert.com/files/RepresentativeExperience/311bf4f5-c96a-4004-84cd-024a72eac723/Presentation/ceRepresentativeExperienceFile1/Dechert_AmLaw_Litigation_Dept_2008.pdf)

-PRESS RELATIONS AND QUESTIONS OF PRIVILEGE.

[https://www.wc.com/assets/attachments/ACCA\\_Docket\\_Privilege\\_and\\_PR\\_Firms\\_July\\_Aug\\_2001.PDF](https://www.wc.com/assets/attachments/ACCA_Docket_Privilege_and_PR_Firms_July_Aug_2001.PDF)

-Privilege in crises situations. <http://www.insidecounsel.com/2012/08/23/ensuring-attorney-client-privilege-in-crises>

-Knowing How to Talk to the press

<http://www.americanbar.org/publications/tyl/topics/in-house-counsel/know-when-how-talk-to-the-media.html>

-Dealing with the press in high profile cases

[http://www.americanbar.org/publications/litigation\\_journal/2014-15/summer/dealing\\_the\\_press\\_highprofile\\_cases\\_how\\_neutralize\\_13th\\_juror.html](http://www.americanbar.org/publications/litigation_journal/2014-15/summer/dealing_the_press_highprofile_cases_how_neutralize_13th_juror.html)

-Ethical limits of dealing with the press

[http://www.americanbar.org/content/dam/aba/publications/litigation\\_journal/summer2015/responding-to-media-reports.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/litigation_journal/summer2015/responding-to-media-reports.authcheckdam.pdf)

CLASS DISCUSSION: Background – What is off label marketing?

(read first few paragraphs only, stop at heading “Companies that have paid . . .”)

<http://www.bioworld.com/content/label-use-fine-line-between-illegal-promotion-and-useful-information>

Amarin & Amgen: is it better to fight or settle?

-Fight?-

<http://www.nysd.uscourts.gov/cases/show.php?db=special&id=478>

-Settle?-

<http://nj.gov/oag/newsreleases15/amgen-judgment.pdf>

I'm from the government and I'm here to help: <http://0->

[www.law360.com/libweb.hofstra.edu/articles/822133/ex-sony-gc-says-fbi-s-help-was-vital-in-breach-aftermath](http://www.law360.com/libweb.hofstra.edu/articles/822133/ex-sony-gc-says-fbi-s-help-was-vital-in-breach-aftermath)

OPTIONAL FURTHER READING:

DeMott, The Stages of Scandal and the Roles of General Counsel,

[http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5251&context=faculty\\_scholarship](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5251&context=faculty_scholarship)

**CREATION OF ATTORNEY CLIENT PRIVILEGE - IN-HOUSE V.**

**OUTSIDE COUNSEL, COMMON V. CIVIL LAW (week 5)**

The common law presumption that outside counsel are sought for legal advice, v

In-House counsel for business advice. The effect of non-legal titles on the

character of the advice. The civil law rule that employed attorneys cannot create

privilege, but have a duty of nondisclosure. The competition dichotomy in Britain, and a comparison with varying rules on accountant privilege in the US.

Materials:

-Upjohn. UPJOHN CO. v. UNITED STATES, 449 U.S. 383 (1981)

-See Material on In house a/c privilege, Sections A & B on Twen

-7 Best Practices for Preserving A/C Privilege

[http://www.corpcounsel.com/id=1202728127773/7-Best-Practices-for-Preserving-InHouse-Counsel-Privilege?cmp=share\\_email&slreturn=20150626123631](http://www.corpcounsel.com/id=1202728127773/7-Best-Practices-for-Preserving-InHouse-Counsel-Privilege?cmp=share_email&slreturn=20150626123631)

**WAIVER OR TERMINATION OF PRIVILEGE - UNFORSEEN**

**PRIVILEGE HOLDERS; CORPORATE DEATH (week 6)**

Sale of all or part of a business. Trustees in bankruptcy.

Materials:

-Material on In house a/c, Sections C et seq.

-Defunct Company

[http://www.americanbar.org/content/dam/aba/publications/litigation\\_committees/trialpractice/red\\_vision\\_systems\\_v\\_national\\_real\\_estate.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/litigation_committees/trialpractice/red_vision_systems_v_national_real_estate.authcheckdam.pdf)

-Ethical Issues for In-House Counsel (including privilege)

[http://www.dorsey.com/files/upload/santon\\_ethical\\_issues\\_inhouse\\_counsel.pdf](http://www.dorsey.com/files/upload/santon_ethical_issues_inhouse_counsel.pdf)

-No Privilege for Risk Managers.

[http://apps.americanbar.org/litigation/litigationnews/top\\_stories/060915-risk-management-privilege.html](http://apps.americanbar.org/litigation/litigationnews/top_stories/060915-risk-management-privilege.html)

-Advice of counsel v. A/C privilege

[https://apps.americanbar.org/litigation/litigationnews/top\\_stories/033116-advice-of-counsel.html](https://apps.americanbar.org/litigation/litigationnews/top_stories/033116-advice-of-counsel.html)

## **INTERNAL INVESTIGATIONS (week 7)**

Upjohn warnings. Intention to create privilege v. disclosure use. Selective waivers.

Potential liability to participants under 18 USC 1001.

### Materials:

-ACC Material <https://www.acc.com/chapters/canada/upload/Internal-Investigations.pdf>

- Nuts and Bolts of Internal Investigation

[http://www.corpcounsel.com/id=1202728127773/7-Best-Practices-for-Preserving-InHouse-Counsel-Privilege?cmp=share\\_email&slreturn=20150626123631](http://www.corpcounsel.com/id=1202728127773/7-Best-Practices-for-Preserving-InHouse-Counsel-Privilege?cmp=share_email&slreturn=20150626123631)

-Boiling the Ocean or 30 seconds in the Microwave

<http://www.americanlawyer.com/id=1202757857269/With-Internal-Investigations-Firms-Walk-a-Tightrope-?slreturn=20160605114356>

-Limited waiver of a/c privilege: Fed. R. Evid. 502

## **WHAT BAR REGULATORS EXPECT. WHAT MANAGEMENT EXPECTS**

(week 8)

LICENSING:

The ACC model rule and its effects. Comparison with rules of professional conduct for multi-jurisdictional practices. Role of pro hac vice.

Material:

-ABA Chart of Rules

[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/in\\_house\\_rules.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/in_house_rules.authcheckdam.pdf)

-Sutherland article

<http://www.sutherland.com/portalresource/lookup/poid/Z1tOI9NPluKPtDNIqLMRV56Pab6TfzcRXncKbDtRr9tObDdEuSZDm0!/fileUpload.name=/Bar%20Licensing%20Compliance%20for%20In-House.pdf>

-Jones Day article <http://www.jonesday.com/files/Publication/89eb9ef7-e976-45e1-bef3-00a7fafa75f3/Presentation/PublicationAttachment/dfd33929-cb77-4d5f-8eb4-0582dc035fb4/Bar%20License.pdf>

Hieneman excerpt from week 1

Business Person First, Lawyer Second?

[http://blogs.findlaw.com/in\\_house/2016/05/in-house-counsel-business-person-first-lawyer-second.html](http://blogs.findlaw.com/in_house/2016/05/in-house-counsel-business-person-first-lawyer-second.html)

Australian in-house lawyers swap companies:

[http://blogs.findlaw.com/in\\_house/2016/05/in-house-counsel-business-person-first-lawyer-second.html](http://blogs.findlaw.com/in_house/2016/05/in-house-counsel-business-person-first-lawyer-second.html)

## **IN-HOUSE COUNSEL AS COST SAVERS AND AS REVENUE SOURCE – FEE SHIFTING (week 9)**

Three principal ways in house counsel save money: move work in house; improve legal processes; manage outside procurement.

Materials:

-Lawyers and accountants: <http://www.corpcounsel.com/id=1202758517894/How-GCs-Should-Engage-With-CFOs-to-Transform-Their-Legal-Departments-PL>

-Outside counsel procurement:

<https://thepractice.law.harvard.edu/article/corporate-purchasing/>

-Corporate value implementation in procurement, an example:

[http://www.americanbar.org/groups/litigation/committees/diversity-inclusion/news\\_analysis/articles-archive/spring2015-0415-how-in-house-counsel-can-promote-lgbt-diversity.html](http://www.americanbar.org/groups/litigation/committees/diversity-inclusion/news_analysis/articles-archive/spring2015-0415-how-in-house-counsel-can-promote-lgbt-diversity.html)

-Contract management: <http://corporate.findlaw.com/business-operations/corporate-counsel-and-contract-management-make-the-most-of-busi.html>

-Contract management (2): <http://www.cbicontracts.com/general-counsel-and-legal-creates-value-through-contract-management-leadership/>

-CM (3): <http://www.acc.com/legalresources/publications/topten/ttsecm.cfm>

-Offshoring: <http://www.corpcounsel.com/id=1202759725611/Shells-Legal-Offshoring-a-Sign-of-Things-to-Come>

-Future procurement – Deloitte study

<http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-future-trends-for-legal-services.pdf>

=Metrics: <http://www.corpcounsel.com/id=1202763706342/OneFourth-of-Legal-Departments-Dont-Use-Metrics-Report-Says?kw=One-Fourth%20of%20Legal%20Departments%20Don%27t%20Use%20Metrics%2C%20Report%20Says&cn=20160727&pt=Afternoon%20Update&src=EMC-Email&et=editorial&bu=Corporate%20Counsel&slreturn=20160709143006>

-Doing more with less: <http://www.corpcounsel.com/id=1202757404620/These-InHouse-Lawyers-Do-More-With-Less>

How do we compute a “lodestar” for a lawyer who is salaried and has no hourly rate?

When should In-House counsel keep time records so their fees can be shifted?

Can corporations practice law?

Materials:

-In house as plaintiff’s counsel:

<http://www.corpcounsel.com/id=1202761476164/How-Coke-and-Home-Depots->

[Lawyers-Are-Making-the-Companies-Money?mcode=1202619158380&curindex=1](#)

-Fee Shifting: The Recovery of In-House Legal Fees, 39 Wm Mitchell L. Rev. 227

-Recent Massachusetts Appellate Decision

<http://masscases.com/cases/app/85/85massappct292.html>

-Billable hours: [http://blogs.findlaw.com/in\\_house/2016/03/billable-hours-are-back-for-many-in-house-attorneys.html](http://blogs.findlaw.com/in_house/2016/03/billable-hours-are-back-for-many-in-house-attorneys.html)

**GC's GONE WRONG -MALPRACTICE: POTENTIAL LIABILITY AND INSURANCE; CRIME (Week 10)**

Liability for malpractice: current employer; successor manager (new owner by sale or bankruptcy). Third party rights from representation letters or reliance. Insurance for in house - malpractice; Officers and Directors Errors and Omissions; Comprehensive General Liability.

Materials:

-Law360 <http://www.law360.com/articles/81660/in-house-counsel-at-risk-for-malpractice-claims>

-Chubb via ACC

[http://www.chubbemail.com/files/MarketBuilder\\_1211\\_CCI1.html](http://www.chubbemail.com/files/MarketBuilder_1211_CCI1.html)

-Disgorgement of in house salary for malpractice? NJ view 2015 WL 5552662 or

<http://law.justia.com/cases/new-jersey/supreme-court/2015/a-93-13.html>

-misappropriating GC <http://www.corpcounsel.com/id=1202759907176/GC-Who-Took-458000-Gets-TwoYear-Suspension>

-allegation is not proof

<https://www.lexisnexis.com/legalnewsroom/criminal/b/newsheadlines/archive/2016/05/06/stanford-ponzi-investors-end-suit-against-firm-39-s-ex-gc.aspx?Redirected=true>

-conflicts of interest:

<http://www.corpcounsel.com/id=1202764256914/A-CLOs-Departure-Shines-Light-on-InHouse-Conflicts?mcode=0&curindex=0&curpage=ALL>

## **THE IN-HOUSE LAWYER AS EMPLOYEE (Week 11)**

At common law a client can fire an lawyer for any reason or none. How does this principle interact with employee anti- discrimination laws and other protective statues? What of the special problem of a lawyer's duty to keep a client's

confidences contrasted with various statutory protections for whistleblowers.

Covenants not to compete are increasing common in the business; they are prohibited in the legal profession. What rules apply to a Senior Vice President and Deputy General Counsel?

Materials:

-A model employment agreement:

<http://www.imla.org/images/links/MISC/cityattorneymodelemploymentagreement.pdf>

Attorneys as whistleblowers (Latham & Watkins)

<http://www.lw.com/thoughtLeadership/SEC-whistleblowers>

NYCLA Ethics

[https://www.nycla.org/siteFiles/Publications/Publications1647\\_0.pdf](https://www.nycla.org/siteFiles/Publications/Publications1647_0.pdf)

But NY is tough: Sullivan v. Harnisch, 19 N.Y.3d 259 (2012), 969 N.E.2d 758, 946 N.Y.S.2d 540, 33 IER Cases 1451, 2012 N.Y. Slip Op. 03574..

v. general view: The Common Interest

Privilege <http://apps.americanbar.org/litigation/committees/trialevidence/articles/full2014-0914-common-interest-privilege.html>

Covenants and SLAPP suits - Fox Searchlight Pictures, Inc. v. Paladino, 89

Cal.App.4th 294

Second Circuit Limits In House as Whistleblowers:

[https://www.dlapiper.com/en/us/insights/publications/2013/11/second-circuit-inhouse-counsel-may-not-seek-to-p\\_\\_\\_/](https://www.dlapiper.com/en/us/insights/publications/2013/11/second-circuit-inhouse-counsel-may-not-seek-to-p___/)

## **FIELDS OF KNOWLEDGE (week 12)**

What fields do in house lawyers usually focus on? What will they in the future? In a world of increasing specialization, how do enterprises find “General Counsel” to at least issue spot broadly.

Materials:

- In house promising fields <http://www.insidecounsel.com/2014/11/03/litigation-most-promising-field-for-legal-hiring>

-Major Lindsey searches <http://www.mlaglobal.com/legal-career-opportunities>

-ACC committees <http://www.acc.com/committees/>

-In house Mergers & Acquisitions work

[http://www.therecorder.com/id=1202733808934/Flood-of-Deals-Swamps-](http://www.therecorder.com/id=1202733808934/Flood-of-Deals-Swamps-InHouse-Teams?back=law&kw=Flood%20of%20Deals%20Swamps%20In-)

[InHouse-Teams?back=law&kw=Flood%20of%20Deals%20Swamps%20In-](http://www.therecorder.com/id=1202733808934/Flood-of-Deals-Swamps-InHouse-Teams?back=law&kw=Flood%20of%20Deals%20Swamps%20In-)

House%20Teams&cn=20150804&pt=Newswire&src=EMC-  
Email&et=editorial&bu=Law.com&slreturn=20150704101837

### **PROPHLAXIS (week 13)**

Keeping the organization out of trouble. Manuals. Education and training. Record retention.

#### Materials:

-Apple and Walmart policies from week 2 above

-ABA Analysis of Record Retention

<http://www.americanbar.org/content/dam/aba/migrated/buslaw/newsletter/0021/materials/recordretention.authcheckdam.pdf>

-ABA Sample Records Policy

<http://apps.americanbar.org/lpm/lpt/articles/sampledcretionpolicy.pdf>

### **CONCLUSION AND CLEAN UP (week 14)**

GC's, a global view and using the 8 "c"s.

[http://www.legalweeklaw.com/research\\_item/28076](http://www.legalweeklaw.com/research_item/28076)