

**So You Want to Teach Law School?**  
*An Informal Session on Teaching About the In-House Practice of Law*

#### DISCUSSION TOPICS

- Things to Think About Before Raising Your Hand
- Ideas to Develop the Focus and Structure of Your Course
- Getting Your Course Idea Approved
- Practical Tips
- Resources Available to You
- Q & A

#### RESOURCE MATERIALS

ACC members currently teach about practicing in-house or provide the in-house perspective on substantive issues in many law schools around the country. Some schools offer more than one class, often as part of a Corporations course. Some courses are team taught by two or more individuals. We are currently reestablishing a community comprised of ACC members who are currently teaching or interested in teaching a law school class about in-house counsel roles (Law School Professors Network). If you would like to join, please contact our Networks team at [networks@acc.com](mailto:networks@acc.com). They would be happy to add you to this community, whether or not you are currently serving as a law school professor or simply aspiring to do so.

Attached you will find samples of the following items we prepared for our respective classes or previously collected from ACC members over the years to show the variety of approaches to teaching a course about in-house practice. For those of you who are currently teaching law school classes about the in-house counsel role, please feel free to share any relevant information you have prepared so we can build out a curated collection of resources for our collective benefit. You can email your “sample documents” to [education@acc.com](mailto:education@acc.com) or post them to the new *Law School Professor Network* community.

**I. COURSE PROPOSALS:** *Law schools generally require new courses to be approved by the Dean or a Curriculum Committee. Generally, courses need to be approved at least one year before they are offered. As a practical matter, many law schools are swamped with applications from practicing lawyers wanting to teach part-time, sometimes full time. A good way to get started may be to offer to be a guest speaker at a currently scheduled course, or to offer to teach a class about in-house counsel within a Corporations or Business Law course or host a lunch or other extracurricular event such as a Career Day discussion about in-house counsel roles. Include in your talk some discussion about internships and jobs, especially if your company has potential openings or your local chapter may offer a corporate internship program. These often help get possible attention as well.*

*The detail and format for course proposals depends upon the school procedures. Here are some examples:*

**A. UNIVERSITY OF NEW HAMPSHIRE: Danette Wineberg**

*This proposal was donated by a retired general counsel who served on the ACC board of directors and is now affiliated with the University of New Hampshire Law School.*

**Excerpts from submissions to Curriculum Committee for In-house Counsel Course**

**Outcomes:**

By the end of this course, when presented with a new factual scenario, students will be able to:

- Spot ethical issues in fact situations involving counsel working in a company and analyze and articulate appropriate courses of action for that lawyer.
- Determine, when confronted with a complex business problem, how to most effectively analyze the problem and approach providing advice, including if, when and how to involve outside counsel, how to manage outside counsel, and how best to communicate with business colleagues.
- Understand and evaluate the way a particular law department is organized, including assessing whether there are more effective ways of organizing and managing to serve a particular company's interests.
- Identify and analyze the unique role of in-house counsel in corporate compliance in light of various rules (e.g. SEC, ABA, etc.) and expectations (e.g. U.S. Department of Justice) concerning corporate conduct.

**Overall course description/relevance to students:**

The in-house practice of law has grown and evolved dramatically over the past several decades. In-house law departments today range from a single general counsel to global law departments

with hundreds of lawyers. In-house practice can be intellectually challenging and personally and professionally fulfilling, and can also involve risks which are different from practicing law in a firm. This course will focus on the unique aspects of working as lawyer within a corporation. Topics covered will include the role of the in-house legal function in a corporation; how legal departments are structured and managed; working with and managing outside counsel; working with the corporation's management and board of directors; advising and counseling internal business clients, and ethics and policy considerations which uniquely impact in-house counsel, such as corporate compliance matters; multi-jurisdictional practice and bar admission requirements; and attorney-client privilege issues.

The course should be relevant to students, whether or not they are considering an in-house practice. Lawyers in private practice often work with in-house counsel, and can be most effective if they have a good understanding of the in-house practice. Government lawyers sometimes interact with in-house counsel, either through investigations or other governmental regulatory matters, and can benefit from an understanding of the role of in-house counsel. Legal services lawyers work with in-house lawyers supporting pro bono work.

**Details of course:**

**Following is an outline of most likely topics and time periods for each:**

**Week(s)**

**1: Introduction** – getting to know each other; course expectations; overview of course; begin history of in-house practice

**2, 3: Background, history and today –**

- History to current structures of legal function
- Relationships in corporations
- Legal departments today, including role of GC
- Demographic trends
- Management expectations, including evaluating and valuing the in-house function

**4, 5: Outside counsel/Outsourcing**

- “Make” vs. “buy” decisions
- Relationships, including managing counsel; fees; emerging issues
- Alternative service models

**6, 7, 8, 9: Compliance, Ethics and Governance**

- “Gatekeeper” role (external and internal points of view)
- Who is the “client”?
- Advising the Board
- Internal investigations
- Lawyer as counselor

**10: In-house counsel role in Corporate Social Responsibility**

**11, 12: Key current practice issues:**

- Attorney/client privilege for in-house counsel
- Licensing: multi-jurisdictional practice

**13, 14: Situational role plays/discussion** (involving multiple issues addressed throughout the term)

**Instructor qualifications:**

I [have] been a lawyer for more than 30 years and have served as the Chief Legal Officer of 3 corporations over 25 years. My most recent position was Vice President, General Counsel and Secretary for The Timberland Company (14 years). I serve on the Board (and Chair the Advocacy Committee) of the Association of Corporate Counsel (ACC), the primary organization for the in-house bar with more than 28,000 members in many countries around the world, and I also serve on the Northeast Chapter Board. I am a member of the American Bar Association, the Michigan Bar Association, and other professional organizations. I am a graduate (*cum laude*) of the University of Michigan Law School.

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**B. GEORGETOWN UNIVERSITY: Fred Krebs and Russ Stevenson.**

*This proposal was developed and submitted by Fred Krebs, ACC's former CEO and Russ Stevenson, a former general counsel who retired and became a full-time professor at Georgetown University Law Center. It was submitted in 2011 and the course was first taught by "Profs" Krebs and Stevenson in the Spring 2012 semester as an exam course. The following year, the format and approach was revised to make the majority of the grade determined by a research paper (approx.. 20 pages). Both of the inaugural professors have since retired and now, the course is taught by Veta Richardson, ACC's current CEO who was formerly in-house at an energy company and Justin Connor who is a former general counsel now serving as Executive Director of the Center for Industry Self-Regulation of the BBB National Programs. We continue to revise the format and class topics based on our experience, trends, and evolving interests. We make liberal use of guest speakers whom the students really enjoy learning from about their career trajectories, range, and scope of responsibilities.*

**Proposal for a Seminar on In-House Practice**

The proposed course is a two-hour seminar limited to 12-14 second year, third year or LLM students, to be offered in the spring semester. The prerequisite for the course is Corporations Law. A course in Professional Responsibility is recommended. The course will focus on aspects

of the practice of law particular to lawyers serving as in-house counsel in businesses or non-profit organizations, including substantive legal issues and practical considerations relevant to lawyers for whom their employer is their only client. In-house counsel perform tasks that are often different from those performed by outside counsel and have certain advantages over outside counsel as well as well as different professional responsibility concerns. The seminar will be co-taught by Justin A Connor and Veta T Richardson. The grade for the course will be based on class participation, a few short papers, a presentation and one paper of approximately 20 pages on a topic germane to the focus of the course.

The following is a proposed summary of the topics and material to be addressed:

#### Introduction to the role of in-house counsel

- Introduction to in-house practice versus law firm or other setting
- The evolution of in-house practice
- Demographics
- The organization as client

#### Setting the Stage: in-house practice settings

- Small departments vs. larger ones
- Private companies vs. Public companies
- Differing industries
- Non-profit organizations

#### Attorney-client privilege issues for the in-house lawyer

#### Corporate governance and business ethics, the corporate secretarial function

#### Corporate compliance and legal risk management

#### Whistleblowing, “reporting up,” and withdrawal

- Sarbanes Oxley and SEC Part 205 rules
- Attorney liability

#### Internal investigations

#### Crisis management

#### Retaining and managing outside counsel

#### Discovery in litigation and records management

#### Contract drafting and contract management

#### The role of lawyers in a business organization

- The dual role as attorney and business advisor

- Managing an in-house legal department

Wrap up and review/reflections on semester

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**II. SYLLABUS:** *The format, structure and focus of the courses vary. Many seek to provide an introduction to the in-house practice, others focus on governance, ethics and professional responsibility issues while some address substantive practice topics as well as business and management issues. In short, there is more than one approach.*

*Guest speakers can be a useful way to bring a particular expertise to your class, in addition to taking some of the speaking responsibility every week from your plate. The speakers may range from local in-house practitioners to individuals with subject matter expertise. In some cases, you may even wish to use available technology and have the speaker connect with your class remotely if attending in person is not an option.*

*Additionally, the course syllabi come in a variety of formats. Some are very detailed while others provide a short summary. Here are several examples:*

**A. UNIVERSITY OF SAN DIEGO:** *The San Diego Chapter of ACC team-taught a 2-hour course on the in-house practice for several years. Here is a summary of a course offering:*

	Date	Topic	Primary Faculty	Potential Additional Faculty
1	6/7/	Intro to in-house practice & practicing preventive law		
2	6/9	Corp as client and other professional responsibility issues		
3	6/14	Business Ethics Programs, compliance, best legal practices and internal investigations		
4	6/16	Practicing in large v. small and non profit government agencies		
5	6/21	Practicing in a public, private and pre-IPO		
6	6/23	Outside counsel management and litigation		
7	6/28	Labor and Employment		
8	6/30	Mini-MBA		
9	7/5	Why and how to teach your clients contracts		
10	7/7	Risk management and crisis management		
11	7/12	Insurance and protecting in-house from liability		
12	7/14	Trade Secrets		
13	7/19	International operations and transactions		
14	7/21	International operations and transactions		

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## **B. OHIO STATE UNIVERSITY**

*This class takes a holistic approach and addresses complex, interrelated issues and then focuses on the importance of tailoring communications to various constituencies while seeking to improve the students' practical writing and problem-solving skills. It was developed by Patricia Hatler, a former ACC Board Chair and the general counsel of Nationwide.*

### **Capstone Professional Practice Course: Lost In Translation**

#### Course Description

Credits: 1

Second Writing Requirement: No

Seminar Requirement: No

Professional Responsibility: No

Prerequisites: None

Grading Basis: Satisfactory/Unsatisfactory

#### **A. Introduction**

In legal practice, particularly legal practice in a large company in-house legal department, issues rarely present themselves in neat packages, one a time. Instead, events and decisions arise quickly. They present themselves as a tangled whole – many issues, complex interrelationships, and conflicting implications. Typically, a situation involves multiple legal issues. Often, events must be responded to on a schedule not of the attorney's making. An attorney's ability to handle essential communications with multiple audiences is critical to determining the client's reaction to an event or situation and to obtaining the best outcome for the client.

This course is based on a hypothetical case study of an insurance company reacting to events in a southern coastal state following a major hurricane. The hypothetical company is named *United States Insurance Company, Inc.* ("USIC"), and the hypothetical state in the southern United States is named *Southern State*. The background facts and issues will be real issues faced by the insurance industry in Mississippi post-Hurricane Katrina, but the specifics of the operations and issues for the company and the state will be hypothetical.

The class is structured as seven, 100-minute classes. The first class is an overview of the industry, operational issues, and legal issues necessary to complete the work for the other six sessions of the class. (The class is NOT intended to impart extensive insurance law expertise. It covers only the minimum insurance law necessary to navigate the hypothetical's communications assignments.)

The rest of the classes cover communications with various constituencies relating to the case study (ex: Board of Directors, senior corporate executives, regulators, Congress, and the media.) Four of the classes will involve written and oral communication opportunities for a portion of students; one class will be a video-taped Board briefing in which every student will be taped briefing the hypothetical board of Directors. One class will involve real time reaction to unplanned media inquiries. The final class will be an informative post-script that moves out of the hypothetical case study to actual, post-Katrina legal, public policy, and media events. Every class will include group discussion and feedback.

### **Goals and Objectives**

The purposes of this Capstone Class are to: (1) expose third year students to the complexity of issues as they present themselves in actual practice; (2) provide the experience of tailoring communications about the same event to different audiences for different purposes; and (3) improve student's practical writing and problem-solving skills.

#### **B. Assessment**

The course would be graded on a satisfactory/unsatisfactory basis. Since this is a one-credit course with only seven sessions, attendance is very important. Students will be dropped from the class if they have unexcused absences. Students will be evaluated on their participation in the exercises, on class participation, and on two written assignments.

#### **C. Accommodations**

Any student who feels s/he may need an accommodation based on the impact of a Disability should contact the Office of Disability Services.

### **Course Outline**

#### **Class One: Overview of U.S. Insurance Regulatory System and Hurricane Issues**

##### **Pework**

- None

##### **Class Goal**

- Provide background on facts and legal issues necessary for subsequent classes

##### **Topics Presented and Discussed During Class**

- State regulation (Insurance Commissioners, Attorneys General, Others)
  - Multi-state regulation; no federal regulation
  - Federal Flood Insurance Program structure
- State law and insurance litigation – multiple state courts and the federal courts
- Insurance Contract language – drafting of, regulation of, litigation of

- Hurricane/Wind contract language (exclusions, definitions)
- Hurricane information
  - Statistics overview re hurricanes generally in U.S.
  - Katrina-specific statistics
- FEMA National Flood Insurance Program – history, basics, statistics
- U. S. Insurance Co., Inc. Hypothetical - Background and Statistics
  - Size, customers, revenue nationally and in Southern State
  - Catastrophe planning and deployment
  - Examples of insurance industry contract language implicated by hurricanes
  - Customer impact of Hurricane Katrina
  - Litigation volumes and issues in Southern State

### **Sources and Presentation Tools**

- Insurance Information Institute historical data re hurricanes and insurer exposures
- National Oceanic and Atmospheric Agency historical data re hurricanes
- News video clips from post-Katrina devastation in Mississippi and other states
- Publicly available contract language from various insurance companies
- Sample state court opinions interpreting same contract language with different outcomes
- Hurricane Katrina Overview; real time video of Katrina hitting Gulfport, Mississippi

## **Class Two: Briefing CEO on Insurance Coverage Litigation**

### **Class Goal**

- Experience synthesizing issues and teeing up litigation strategy decisions to executive management

### **PreWork**

- Review Hypothetical Background Information
  - Statistics and key facts re USIC customer policies and litigation in Southern State
  - Summary of USIC litigation on similar issues in other states and assessment of Southern State law on flood exclusion
  - Summary of USIC assessment of Southern State federal and state court options
  - Letters from Plaintiffs counsel re potential bulk settlement, judge re arbitration, and Insurance Commissioner re mediation possibilities
  - Summary of key issues for corporate executive decision-makers
- **Prepare**
  - Recommendations and risk assessment re executive decisions on any 3 of the following issues
    - Should the company pay all customer claims regardless of limits in insurance policies?
    - Should the company accept the Scruggs bulk settlement offer?
    - Should the company litigate or settle the first-in-line lawsuit in Southern State?

- Does plaintiffs' request for non-jury trial influence the litigation recommendation?
- Does federal versus state court jurisdiction influence this recommendation?
- Should the company agree to arbitrate its litigation?
- Should the company agree to mediate claims disputes with customers through the state insurance department?

**Class Activity**

- Divide into small groups, role play attorneys presenting recommendations to CEO
- Discuss and debrief various communication approaches for presentation

**Class Three: Legal Situation Overview to Board of Directors****Class Goal**

- Prepare written outline of issues and key messages to summarize situation to USIC Board of Directors
- Present situation overview to Board of Directors

**Pre-Work**

- Biographies of hypothetical Board of Directors
- Corporate guidelines for preparation of Board materials
- Background on Board of Directors
- Photographs/videos of coastal home and courthouse damage in Southern State

**Prepare**

- Agenda for board discussion
- Outline of 15-minute presentation to Board to cover
  - Claims and litigation volumes
  - Contract language issues
  - Litigation strategy issues
- List of slides to use with Board presentation
- 15-minute presentation (15 minutes includes formal remarks and 5-10 minutes for questions and discussion)

**Class Activity**

- Each student presents Board overview and is videotaped delivering the presentation
- Class discussion and debrief re effective communications approaches
- Each student receives a disc of their presentation for future reference

## **Class Four: Congressional Inquiry and Testimony**

### **Class Goal**

- Exposure to timing and scope of congressional inquiries
- Exposure to preparation of Congressional testimony

### **PreWork**

- Background and bios on elected Southern State Congressional Representatives and Senators
- U. S. Insurance Co. Government Relations department write-up on positions of Reps and Senators on issues important to insurance company
- Letter from U.S. Senate Committee re production of materials and invitation to testify

### **Prepare**

- Draft outline of testimony of USIC CEO for joint congressional hearing
- List of five key issues raised by draft testimony

### **Class Activity**

- Video clips of actual testimony at House Katrina hearing and Senate AIG inquiry
- Group discussion of issues identified re draft testimony and corporate positioning
- Guest Speaker – Registered lobbyist in Washing, D.C.

## **Class Five: Communicating With the Regulator**

### **Class Goal**

- Exposure to communicating in writing and in person with elected state insurance regulator
- Exposure to handling client mistakes in responding to regulator inquiry

### **Pre-work**

- Biography of Southern State elected insurance commissioner
- Overview of Southern State political landscape and insurance commissioner election process
- Overview of insurance industry in Southern State
- Overview of flood insurance coverage in the U.S. – private and governmental structures
- Statistical summary of USIC policyholders and post-Katrina claims
- Letter from Insurance Commissioner requiring information and statistics re claims practices and requesting meeting to discuss – law department receives letter after production due date
- Overview of USIC claims statistics and practices

### **Prepare**

- Response letter back to Insurance Department re materials requested
- Outline of issues and messages for discussion with Insurance Department

**Class Activity**

- Video of actual TV ads in 2008 for three Mississippi Insurance Commissioner candidates
- Discuss political context and influence on regulator activities
- Discuss perspective of Insurance Department
- Discuss handling communications with regulator
- Role play meeting with Insurance Dept
- Debrief and discuss issues with communications with Insurance department
- Guest Speaker – former Ohio Insurance Commissioner

**Class Six: Media****Class Goal**

- Exposure to variety of issues involved in planning and reacting to media inquiries
- Experience need to react immediately to media inquiry

**Pre-Work**

- U.S. Insurance Co. press release on Katrina claims handling in Southern State
- Overview of key media outlets in Southern State
- Summary of key media events post-Katrina in Southern State
- Articles re post-Katrina insurance practices and public official statements

**Prepare**

- No written or oral prep required; all activity during class

**Class Activity**

- Read situation brief re an afternoon in Legal Dept at USIC
  - Key executives unavailable
  - Powerful media reporter calling CEO
  - CEO instructs his office to forward media calls to in-house attorney
- 4 Students identified to role play role of attorney and reporter
- Role play attorney talking with reporter
- Class discussion re issues and approaches to media
- Guest Speaker – Public relations professional with experience in handling media during active litigation

**Class Seven: Wrap Up and Debrief****Class Goal**

- Provide actual fact post-script re industry issues in Mississippi post Katrina
  - State Farm whistle-blower issues
  - Richard Scruggs criminal conviction for judicial bribery

- Nationwide *Leonard* case result on appeal to 5<sup>th</sup> Circuit and Mississippi Supreme Court
- Insurance Commissioner defeated in next election cycle
- Public policy movement and propositions post-Katrina
- Provide substantial opportunity for general discussion and debrief re communications issues as a practicing in-house attorney

### **Pre-Work**

- Articles and videos re State Farm and Richard Scruggs issues
- Public post-Katrina policy propositions of Travelers, Allstate, and Nationwide
- Public post-Katrina policy propositions of Mississippi elected officials

### **Prepare**

- None

### **Class Activity**

- Group discussion in four parts
  - Judicial opinions and issues
  - State Farm and Scruggs issues discussion
  - Public Policy possibilities
  - Communications Q&A
- Guest Speakers – litigators who handled Nationwide Katrina litigation in Mississippi

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## **C. UNIVERSITY OF NEW HAMPSHIRE Danette Wineberg**

### **Practicing Law In-House: What's It All About?**

Spring Semester

Wednesdays – 3-5 pm

***Instructor:*** Danette Wineberg

### ***Course description:***

The in-house practice of law has grown and evolved dramatically over recent decades. In-house law departments today range from a single general counsel to global law departments with hundreds of lawyers. In-house practice can be intellectually challenging and personally and professionally fulfilling and can also involve risks which are different from practicing law in a firm. This course will focus on the unique aspects of working as lawyer within a corporation. Topics covered will include the role of the in-house legal function in a corporation; how legal departments are structured and managed; working with and managing outside counsel; working with the corporation's management and board of directors; and ethics and policy considerations which uniquely impact in-house counsel, such as corporate compliance matters; multi-jurisdictional practice and bar admission requirements; and attorney-client privilege issues.

***Course requirements:***

- Attend,\* prepare for, and actively participate in class (30% of grade)
- Complete in-class written exercises and paper (40% of grade)
- Final exam (30% of grade)

\*mandatory per UNH School of Law academic rules

***Reading materials:*** Articles and other materials from legal and business periodicals; will be posted on TWEN, available on Westlaw, or available through website of the Association of Corporate Counsel (ACC)

***Class sessions and topics:***

Week #/Date                      Topic

**1** (1/16)                                      Introduction

***The Legal Department: Function and Management***

Includes: Function in and relationships within the company; role; expectations of executives; structure and organization; management; budgeting; role of general counsel; skills and competencies for success; outside counsel: selecting, managing, financial arrangements

**2** (1/23)                      Legal Department

**3** (1/30)                      Legal Department  
Guest:

**4** (2/6) Outside Counsel  
Guest: (via remote connection)

**5** (2/13)                      Outside Counsel  
Guests:

**6** (2/20)                      Outside Counsel

[February 27 – Break]

***Governance, Privilege, Ethics, and Compliance***

Includes: in-house counsel's role; attorney/client privilege in-house; internal investigations; international privilege issues; ethics for in-house counsel; multi-jurisdictional practice; in-house counsel role in compliance and risk management; prosecution of in-house counsel

**7** (3/6) Attorney-Client Privilege

- 8** (3/14) Attorney/Client Privilege and Ethics
- 9** (3/20) Attorney/Client Privilege, Ethics, and Case Study  
Guest:
- 10** (3/27) Attorney/Client Privilege, Ethics, and Case Studies  
Guest:
- 11** (4/3) Ethics and Compliance  
Guest:
- 12** (4/10) Summary: Attorney/Client Privilege, Ethics, Compliance

*Other Topics for In-House Counsel*

- 13** (4/17) Corporate Social Responsibility: Role of In-House Counsel  
Assessing how you are doing: Client Surveys

*Putting It All Together*

- 14** (4/24) Summary and wrap up Guests: General Counsel Panel
- XXXXXX, Chief of Litigation and Compliance, GC Office [hospitals]
  - XXXXXX, International Legal Consultant, former VP and GC International Company
  - XXXXXX, VP, GC and Sec at Technology Company
  - XXXXXX, Sr. VP and GC of Manufacturing Company
  - XXXXXX, former Sr. VP, GC of Big Company

**Readings: Practicing Law In-House: What's It All About**

This class did not designate a course book, but instead relied upon providing students a relevant sampling of articles and materials on each of the above topics. This professor drew largely from materials provided by ACC and accessed via the ACC Resource Library.

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**D. UNIVERSITY OF COLORADO      Mark Roellig**

*This course addresses many of the same themes as the others but is structured differently. It is a one credit course, but the schedule is compressed and the class is completed in one week. It was developed by a longtime ACC member who served as CLO of Massachusetts Mutual Life*

*Insurance Company prior to his retirement in 2019 and current affiliation with Perkins Coie as Senior Client Advisor.*

## **An Introduction to the In-House Practice of Law**

### **Mark Roellig**

The provision of legal services to corporate America is changing dramatically with more and more entities relying on in-house counsel, as compared to private practitioners, to obtain their legal advice and counsel. This one credit course, will explore a set of cutting edge questions around the practice of law as an employee of a business. It will also show how the combination of law and business in ones career can be valuable to businesses and innovative, challenging and rewarding to many legal professionals. The class will be taught primarily by the case study method used in business school, where the student will be expected to read a real life business/legal fact pattern, put yourself in the shoes of the lawyer, analyze the situation, evaluate options, decide what you would do and come to class prepared to discuss and defend your decisions. Students in the class will also be required to take a two hour exam and will also be graded on their class participation. In addition to the business/legal cases, students will be required to read articles that focus on business concepts, changes in the practice of law and the in-house practice of law.

### **Monday, January 7, 2013**

***Theme:*** Day one will focus on: the role of the in-house lawyer, the need to understand business and the company's business and how to use legal as a strategic asset for the company.

#### ***Materials to Have Been Read:***

- “Learning by the Case Method,” Hammond;
- “What is Strategy,” Porter;
- “Winning Legally: The Value of Legal Astuteness,” Bagley;
- “What’s Law Got to Do With It – Integrating Law and Strategy,” Bagley; and
- “Legal as a Strategic Asset for the Business,” Roellig.

#### ***Case Studies to Have Been Read and Prepared:***

- “USG A;” and
- “Wal-Mart.”

***Teaching Methods:*** Lecture (including questions/answers) format and case studies.

### **Tuesday, January 8, 2013**

***Theme:*** Day two will focus on how in-house counsel assembles the best teams to address legal matters the company will face. Discussion will include the mix of internal and external resources, the use of non-lawyer professionals and how to leverage the traditional law firm model.

***Materials to Have Been Read:***

- “When Professionals Have to Manage,” Lorsch and Mathias;
- “The End of Management,” Murray;
- “Muscle Build the Organization,” Pearson;
- “A Leadership Primer,” General Colin Powell; and
- “Why Diversity is Critical to the Success of Your Law Department” Roellig.

***Case Study to Have Been Read and Prepared:***

- “From Brussels to Paris.”

***Teaching Method:*** Lecture (including questions/answers) format and a case study.

**Wednesday, January 9, 2013**

***Theme:*** Day three will focus on how you lead an in-house legal function. There will be a discussion of legal budgeting, building a team (including the value of diversity), setting objectives and measuring and reporting against those objectives.

***Materials to Have Been Read:***

- “Reebok Rules,” Douglas;
- “OMG, Was That Just a Dream? I Just Became a General Counsel. What Do I Do Next?” Roellig;
- “A Business Approach to Litigation Management,” Russ and Roellig;
- “Systemic Challenges to Results-Based Pricing,” Roellig; and
- “Managing Outside Counsel,” MassMutual slide deck.

***Case Studies to Have Been Read and Prepared:***

- “Repo 105 Case A;” and
- “Prospect Asset Management.”

***Teaching Method:*** Lecture (including questions/answers) format and case studies.

**Thursday, January 10, 2013**

***Theme:*** Day four will focus on the role of the in-house lawyer in the company’s controls/culture, *i.e.*, interrelationships with ERM (enterprise risk management), internal audit, compliance and finance.

***Materials to Have Been Read:***

- “Law for a Flat World,” Hadfield;
- “Time to Deregulate the Practice of Law,” Winston and Crandall; and
- “Transformation of the General Counsel: Setting the Strategic Legal Agenda,” Bagley and Roellig.

***Case Studies to Have Been Read and Prepared:***

- “Repo 105 cont’d;” and
- “Regal Mutual Life.”

***Teaching Method:*** Lecture (including questions/answers) format and case studies.

**Friday, January 11, 2013**

***Theme:*** Day five will start with a two hour final exam. A short summary of facts is provided in “Final Exam – UBS.” These facts will just be a foundation for hypothetical questions, some of which, but not all, will relate to the facts. The questions will be such that there will be no benefit in spending more time reading about UBS, the timing or the issues involved. And you may bring this fact pattern in to the exam.

***Materials to Have Been Read for the Exam:***

- ***Exam - UBS***

In addition, the last hour will be on the focus on the skills a student or a lawyer should obtain to be an effective in-house attorney and how to obtain such skills. In addition, there will be a discussion around the benefits and detriments of in-house practice.

***Materials to Have Been Read:***

- “The New Path to the C-Suite,” Groysberg, Kelly and MacDonald;
- “What’s Really Going on In Today’s Legal Departments,” Williamson;
- “So You Want to Be a General Counsel? How to Maximize Your Chances,” Love and Roellig; and
- “Transition Lessons” Morrin, Peaslee and Roellig; and
- “A Day in the Life of a GC,” Roellig.

***Teaching Method:*** Final Exam, lecture and guest speakers – Bill Ojile, Senior Vice President and Chief Legal and Compliance Officer, Westwood College, Maria Woods Vice President Deputy General Counsel, NCM Media Networks, Carmel Gill, Counsel, Level 3 Communications, LLC.

**Additional Materials For Your Information**

- “The Practitioners Guide to Building Efficient Board and Committee Processes,” Roellig.
- “Pointers for Success on Your New Job,” Roellig, Roellig and Curphy.
- “First Law Clerk Interview,” MassMutual.
- “The Corporate Counsel’s Guide to Growing Diversity and Inclusion,” Roellig and Walters.

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**E. Cumberland School of Law, Homewood, Alabama - David Benck**

Mr. Benck donated the below outline several years ago for inclusion in a prior Annual Meeting program on the topic of teaching in law school. He is an ACC member currently serving as the SVP & GC at Hibbett Sports.

**DRAFT SYLLABUS  
PRACTICING LAW IN-HOUSE**

- I. Differences between In House Counsel and Outside Counsel
  - Diversity of issues
  - Non-Compete Agreements
  - Becoming the ultimate decision maker: where the buck stops.
- II. Licensing Rules
  - The unauthorized practice of law (Rule 5.5).
- III. Who is the “client?”
  - Public company vs. private company
  - Saying “yes” or “no” vs. merely giving advise
  - Addressing employee personal questions
- IV. Learning the business of your client
- V. Learning the laws that affect every client
  - A. Employment
  - B. Contract
  - C. Advertising
  - D. Intellectual Property
  - E. Corporate
  - F. Securities
- VI. Educating yourself and knowing your limits
  - Staying abreast of every International, Federal, State and local law
  - When to seek outside counsel
  - Retaining outside counsel
  - Managing outside counsel
- VII. Litigation and other Disputes
  - You are the First Responder when an incident arises

- Predicting the outcome of a dispute before an incident occurs
- How to truly measure “winning”
- Estimating and accruing future losses/FAS 5 (ASC 450)

VIII. Government Investigations

IX. Compliance

- Yes, it is everyone’s job, but ultimately it is just you.

X. Identification and Management of Risk

- Insurance
- Indemnification
- Disaster Recovery

XI. Speaking to Lay Persons

XII. Attorney-Client Privilege and Waiver

XIII. Ethics

- ~~Black~~ Grey Letter Law
- How to always say “Yes, but...”

XIV. Record Retention and the Federal Rules of Civil Procedure

XV. Personal Liability

- Civil
- Criminal

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**F. UNIVERSITY OF SOUTHERN CALIFORNIA: Past ACC Board Chair  
Mike Roster, former GC of Stanford University and Golden West Financial.**

*This course was developed by a former ACC Board Chair and focused on contract drafting and practical skills development that you generally do not find in traditional law school courses. It also used longer classes and compressed the time frame with the course being completed in 7 weeks rather than the 13-14 weeks of a normal semester.*

**Contract Drafting and Strategy – Law 710 – Michael Roster**  
2 units, Spring Semester (Monday Section)

**Course Description**

The goal is for students, by the end of this two-unit course, to be able to perform at the level of a six-month to one-year attorney or higher when it comes to drafting, reviewing and revising contracts. Feedback will be similar to the types of performance reviews used at companies and law firms.

The course will start with an introduction to the standard structure and terms of a typical contract. Students will then examine a broad range of contracts in actual use (e.g., business agreements, law firm retainer letters, consumer credit card agreement, web site terms of use, etc.) and present to the class their assessment of why provisions were likely drafted as they were, what alternatives might be considered and how specific provisions might subsequently be challenged. Students will draft a simple version of a contract and then interpret a complex contract. The final third of the course will be team presentations with the rest of the class functioning as the client's CEO, CFO, general counsel and other senior managers.

**Instructor Contact Details and Office Hours**

Professor

Telephone (222 222 2222, email: [professor@school.com](mailto:professor@school.com))

Office hours by arrangement, including before and after class.

**Course Requirements and Grades**

Preparation and participation: There will be seven intensive class sessions instead of the normal 14. The sessions will be highly interactive, and the class will be small (limited to 20 students). Model contracts for analysis, other materials and further details on assignments will be distributed through the course pages on Blackboard. All students are expected to prepare the assigned material and exercises.

Grading and Final Exam: Students may elect numerical or CR/D/F grading. Students will be evaluated based upon their performance on (a) written assignments, which generally will be limited to a maximum of 3 to 5 pages in length, and (b) classroom participation in a law firm-type setting, and later through the team presentations. There will not be a final exam.

**Contract Drafting and Strategy | Spring Semester 2013 | Michael Roster | Schedule and Syllabus for Monday Section**

[As of 12/9/12d; subject to change | Course #Law 710 | Class #03392 | Room 107]

Session	Date/topic	What's covered	Questions students should ask	Substantive knowledge to be learned	Professional skills to be developed	Assessment factors
1.	<b>January 14</b>  <b>Introduction to typical contract structures, terms and methods</b>	Goals and methodology for the course; learning by doing.  Lecture re typical structures and terms of a contract.  <i>Students will be randomly assigned one or more traditional contracts for analysis for sessions 2 and 3.</i>  <b>Materials:</b> <ul style="list-style-type: none"> <li>All-inclusive sample contract (Humpty Dumpty).</li> <li>Slides re other factors.</li> <li>Sample contracts for the next two sessions.</li> <li>Assignment memo and guidance for the next two sessions.</li> <li>Blackboard readings about effective drafting and effective presentations.</li> </ul>	<ul style="list-style-type: none"> <li>What makes for a good contract?</li> <li>What are standard structures and provisions?</li> <li>What are typical weaknesses?</li> <li>What are useful document management procedures?</li> <li>“So what?”</li> </ul>	<ul style="list-style-type: none"> <li>Typical structure.</li> <li>Typical provisions.</li> <li>Impact of government as a party.</li> <li>Common mistakes.</li> <li>Use of exhibits, opinions, certificates, etc.</li> <li>Closings.</li> </ul>	Learn how to readily assess contract terms and structure: <ul style="list-style-type: none"> <li>The core deal.</li> <li>Secondary provisions.</li> <li>Priorities of client and other parties.</li> <li>Strengths of document.</li> <li>Weaknesses.</li> <li>Potential ambiguities and tricks.</li> <li>Potential challenges.</li> <li>“So what?”</li> </ul> <p>Document management.</p>	For entire course: <ol style="list-style-type: none"> <li>Understands standard contract structures, provisions and methods.</li> <li>Addresses client objectives and priorities.</li> <li>Applies applicable legal principles.</li> <li>Demonstrates mastery of these skills, in both written work and class presentations, as well as in general class participation.</li> </ol>
	<b>January 21</b>	<i>No class; Martin Luther King day</i>				
2.	<b>January 28</b>  <b>Student-led reviews of sample contracts</b>	Prior to this session, students will have prepared and submitted for posting on Blackboard a two- to three-page memo about their assigned contracts from the perspective of an assigned party.  This and the next session will consist of student presentations as to what they see as effective and what might be improve	<ul style="list-style-type: none"> <li>Core deal?</li> <li>Structure?</li> <li>Drafting?</li> <li>Interests of parties?</li> <li>What is effective?</li> <li>What might do differently?</li> <li>What subject to challenge, and how?</li> </ul>	Depends on the specifics of the assigned contract.	<ul style="list-style-type: none"> <li>See how concepts from session 1 are applied to real world sample contracts.</li> <li>Recognize different purposes of different</li> </ul>	<ol style="list-style-type: none"> <li>Key elements of the contract are identified.</li> <li>Key substantive laws are addressed.</li> <li>Good prioritization of what matters, what key legal principles apply, what are the</li> </ol>

		<p>discuss their assigned contracts, taking into account the purposes of the documents and the desires and circumstances of the assigned parties.</p> <p>The rest of the class will then be asked to comment, including how they might challenge a given contract on behalf of a third party.</p> <p><b>Materials:</b></p> <ul style="list-style-type: none"> <li>• Sample contracts previously assigned for discussion at this and the next session.</li> <li>• Student work product for each assigned contract for discussion at this and the next session.</li> </ul>	<ul style="list-style-type: none"> <li>• “So what?”</li> </ul>		<p>contracts, and different priorities for different parties.</p> <ul style="list-style-type: none"> <li>• Identify strengths and weaknesses in structure and substance.</li> <li>• Strengthen writing and analytical skills.</li> <li>• Strengthen class/client presentation skills, including relevance of what selected for discussion.</li> <li>• Strengthen skills for handling questions from the class/client.</li> </ul>	<p>relevant strengths and weaknesses, etc.</p> <ul style="list-style-type: none"> <li>d. Grammar and structure of memo reflect a high quality legal work product.</li> <li>e. Oral presentation is professional in demeanor, highlights key points and has right priorities.</li> <li>f. Class discussion is collaborative; contributes to the education of fellow classmates.</li> </ul>
<p>3.</p>	<p><b><u>February 4</u></b></p> <p><b>Student-led reviews of sample contracts (continued)</b></p>	<p>Continuation from Session 2.</p> <p><b>Materials:</b></p> <ul style="list-style-type: none"> <li>• Same sample contracts as session 2.</li> <li>• Same student work product for each assigned contract, with remaining contracts to be discussed at this session.</li> <li>• Assignment memo and guidance for drafting a simple contract for the next session.</li> </ul>	<p>Same.</p>	<p>Same.</p>	<p>Same.</p>	<p>Same.</p>

<p>4.</p>	<p><b><u>February 11</u></b></p> <p><b>Drafting a simple contract</b></p>	<p>For the first few minutes, students will do a quick markup of a randomly assigned contract that was prepared by a classmate for this session.</p> <p>The next segment of this session will consist of student discussion of the various draft contracts.</p> <p>This segment will be followed by a discussion of what makes for good drafting, including a discussion of reference materials previously posted on Blackboard.</p> <p><i>At the end of this session, students will review a complex contract, with the task of preparing a basic form of opinion letter to be submitted before the next session.</i></p> <p><i>Students also will be assigned at the end of this session to teams, each of which will select a type of contract. Each team will have the task of preparing a draft of its assigned contract for review by the client. The drafts can be in a traditional contract format or alternatively (depending on the type of contract) in the form of a business letter agreement or a consumer plain language agreement.</i></p> <p><b>Materials:</b></p> <ul style="list-style-type: none"> <li>• Student drafts of a simple contract, to be discussed at this session.</li> <li>• Text of a complex contract, opinion letter templates, legal research already completed for use in the</li> </ul>	<ul style="list-style-type: none"> <li>• What is purpose of a given contract?</li> <li>• What matters most to the client? To the other parties?</li> <li>• What are most relevant legal and other risks, and how address them?</li> <li>• What is effective structure (formal, informal, exhibits, etc.)?</li> <li>• How enforce?</li> <li>• “So what?”</li> </ul>	<ul style="list-style-type: none"> <li>• Parties.</li> <li>• Structure.</li> <li>• Basic terms.</li> <li>• Subsidiary terms.</li> <li>• Enforceability.</li> <li>• Potential challenges.</li> <li>• Relevance to parties</li> <li>• Understandability.</li> <li>• How deal with competing priorities of the parties.</li> </ul>	<p>Hone drafting skills, taking into account:</p> <ul style="list-style-type: none"> <li>• Best structure and terms for contract’s purpose.</li> <li>• Clarity and precision of language.</li> <li>• Prioritization of what matters, taking into account client’s and other parties’ interests.</li> <li>• Application of relevant legal principles to what is drafted.</li> </ul>	<p>Demonstrates professional drafting skills, taking into account:</p> <ol style="list-style-type: none"> <li>a. Key issues for purposes of the contract.</li> <li>b. Appropriate legal principles.</li> <li>c. Priorities of the client and other parties.</li> <li>d. Drafting skills:             <ul style="list-style-type: none"> <li>○ Effectiveness of specific provisions and of the document overall.</li> <li>○ Practicality of enforcement provisions and remedies.</li> <li>○ Grammar, etc. that is professional and furthers the purposes of the contract.</li> <li>○ Structure, appearance, etc. that further the purposes of the contract.</li> </ul> </li> </ol>
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		opinion letters, and an assignment memo and guidance for the next session.				
	<b>February 19</b> <i>(Tuesday)</i>	<i>No class this week to give everyone some extra time on projects and a bit of a rest.</i>				
5.	<b>February 25</b>  <b>Interpreting a complex contract</b>          <b>Prepare for team projects</b>	<p>Discussion of the student opinion letters interpreting a complex contract. This will <i>not</i> necessitate organized presentations but rather an open-ended discussion by the entire class of the various opinion letters, the various conclusions, how those conclusions were derived, which one or two opinion letters seemed to stand out for each position, and what everyone thinks are the relative strengths and weaknesses of the various opinion letters overall.</p> <p>For the second half of this session, students will use the time to meet with their teams to discuss their drafts and presentations, in addition to whatever time they may wish to arrange outside of class for these purposes.</p> <p><b>Materials:</b></p> <ul style="list-style-type: none"> <li>• Student opinion letters interpreting the complex contract, to be discussed at this session.</li> <li>• Team assignments and accompanying guidance for the final two sessions.</li> <li>• Reading materials re working in teams and re project management.</li> </ul>	<ul style="list-style-type: none"> <li>• What happened here?</li> <li>• What are effective methods of interpretation?</li> <li>• How communicate issues, conclusion, legal principles that support conclusion, 2-3 key points of other side, and rationale for recommended action?</li> </ul>	<ul style="list-style-type: none"> <li>• Purpose, format and methodology of opinion letters.</li> <li>• Interpretation of a complex document.</li> <li>• Application of relevant legal principles.</li> <li>• Possible application of other analytical approaches.</li> <li>• Never be intimidated that big firm produces professional-looking, very complicated document.</li> </ul>	<ul style="list-style-type: none"> <li>• Become comfortable interpreting a typically complex (and possibly over-lawyered) document.</li> <li>• Identify fundamental strengths and flaws.</li> <li>• Determine how to advise a client when there may be no readily apparent answer.</li> </ul> <p>Address:</p> <ul style="list-style-type: none"> <li>• Ambiguity.</li> <li>• Complexity.</li> <li>• Purpose of deal.</li> <li>• Interests of differing parties.</li> <li>• Legal principles.</li> <li>• Text.</li> <li>• Structure.</li> <li>• Everything else.</li> </ul>	<ol style="list-style-type: none"> <li>Clarity in identifying key issues.</li> <li>References to relevant legal and other interpretive principles, if useful.</li> <li>Effective references to contract language and structure, purpose of deal and other factors to support advice; application of other analytical approaches if useful.</li> <li>Written advice is             <ul style="list-style-type: none"> <li>○ Readily understandable by client.</li> <li>○ Reasonably convincing to a neutral third party reader.</li> <li>○ At least plausible to opposing parties.</li> </ul> </li> </ol>

<p>6.</p>	<p><b><u>March 4</u></b></p> <p><b>Team presentations to clients of rewritten contracts</b></p>	<p>Team presentations, with the rest of the class functioning as the client’s CEO, CFO, general counsel and other senior managers.</p> <p><b>Materials:</b></p> <ul style="list-style-type: none"> <li>• Team work product for their assigned contracts.</li> </ul>	<ul style="list-style-type: none"> <li>• What is relevant to the client for the revised drafts?</li> <li>• What is relevant to the client in the face-to-face presentations?</li> <li>• What need to get across to the client (strengths, risks, trade-offs, etc.)?</li> <li>• How anticipate and then handle client questions, comments and suggestions?</li> <li>• “So what?”</li> </ul>	<ul style="list-style-type: none"> <li>• Depends on the specifics of the assigned contract.</li> <li>• Strengths and weaknesses of formal contract versus alternative use of a business letter/plain language contract.</li> </ul>	<ul style="list-style-type: none"> <li>• Teamwork in drafting and presentations.</li> <li>• Interactions with client.</li> <li>• Full range of drafting and presentation skills needed as a practicing lawyer.</li> </ul>	<ol style="list-style-type: none"> <li>a. Demonstrates full range of professional skills as a practicing lawyer:             <ul style="list-style-type: none"> <li>○ To revise and improve an existing contract.</li> <li>○ To brief a client.</li> </ul> </li> <li>b. Addresses relevant principles from prior sessions.</li> <li>c. Team works effectively as a group while drawing upon individual skills.</li> <li>d. Overall:             <ul style="list-style-type: none"> <li>○ Quality of the revised contracts (key issues, substantive principles, competing priorities and tradeoffs, clarity and effectiveness of written work product, etc.).</li> <li>○ Quality of client presentations (clear and effective, professional, help client make relevant decisions, etc.).</li> <li>○ Quality of interactions internally among teammates, and</li> </ul> </li> </ol>
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						externally with the client/class.
7.	<p><b><u>March 11</u></b></p> <p><b>Team presentations to clients (continued)</b></p> <p><b>Course wrap up</b></p>	<p>Completion of team presentations.</p> <p>In the final portion of this last session, the class will discuss what has been learned and how to apply substantive knowledge and professional skills going forward.</p>	Same.	Same.	Same.	Same.

## **IV. ASSIGNMENTS, PAPERS AND EXAMS.**

*Students will normally be evaluated by how well they do on assignments, papers, final exams or all three. Additionally, attendance may be mandatory and some professors consider class participation as well. Exams may be take home and open book. They may have page limits as well as no collaboration requirements. Some include oral presentations by the students.*

### **A. Final Exam UNIVERSITY OF COLORADO Mark Roellig**

#### **AN INTRODUCTION TO IN-HOUSE PRACTICE**

##### **Final Exam**

##### **Winter Session**

**Adjunct Professor: \_\_\_\_\_**

**2 Hours (120 minutes)**

Please Note: Under the **HONOR CODE**, the submission of any academic work constitutes a representation by you that the work has been done, and the submission is being made, in compliance with these exam instructions and all applicable provisions of the **HONOR CODE**.

This is a closed-book 2-hour exam that consists of seven questions, each of which has several sub-parts. Be sure to answer all of the questions asked and to read the instructions for each question carefully. During the exam, you may consult **ONLY** the article referenced below, which is posted on the school intranet site. Please do not use any other materials, including the Internet, and remember that you are bound by the **HONOR CODE** to adhere to this instruction.

The fact pattern for several of the questions to this exam is the Wall Street Journal Article, “ABC Admits Rigging Rates in ‘Epic’ Plot” and attachment, found in the school site: “Final Exam – ABC” file.

For all questions you are to assume you are Hank Fanning, the Executive Vice President and General Counsel and Corporate Secretary of ABC.

Details relating to this fact pattern but not mentioned in the questions are irrelevant.

#### **Question 1. ABC Board Meeting (20 points)**

You have become aware of potential issues regarding the industry and ABC’s potential involvement in activities which might have impacted LIBOR rates. Your litigation and regulatory

team (it is well-staffed—22 lawyers and 14 paralegals) have conducted a preliminary investigation, consisting primarily of interviewing individuals who may have been involved in the issues and reviewing only the documents that the interviewees have referenced to your team that may be valuable for the investigation. You have not conducted the full document search or e-discovery that will reveal the emails that are part of the fact pattern for this exam. Today you met with the Board of Directors as a part of the regularly scheduled May meeting. At the request of the Chairman, you were scheduled for fifteen minutes on the agenda to provide the Board with an overview of the facts, legal issues, and recommended next steps. After a thorough discussion, and based on your recommendation, the Board concluded that it makes sense to retain outside counsel to assist in a full assessment of the risk of this matter to ABC.

- 1.a. As you interview firms to use, what criteria will you use to select a firm?
- 1.b. How will you assign work between your litigation team and the outside firm?
- 1.c. To assist your Board in understanding the risk, how will you ask your outside counsel to communicate their assessment? Draft the portion of the engagement letter making clear your expectations.

**Question 2. Day Before ABC Second Quarter Earnings Call, (20 points)**

The investigation by the regulators relating to the LIBOR issue is heating up. The regulators have discovered through subpoenas all the e-mails referenced in the materials you read in preparation for this exam. Under the Financial Accounting Standards (FAS 5) ABC is obligated to report in its financial statements the following:

- If a loss contingency is "probable" under FAS 5, ABC must disclose the matter in its financial statements, indicate it is "probable," indicate the range of likely exposure, and take a charge to expenses at the lower end of the range of exposure. ***This would result in significant negative earnings for the quarter, and the full year.***
- If a loss contingency is "reasonably possible" under FAS 5, ABC must disclose it in its financial statements and indicate the range of likely loss.
- If a loss contingency is "remote" under FAS 5, ABC had no obligation to disclose at all.

With support of your outside counsel, to date you have advised the Board and senior management that it is too early in the investigation to have an accurate assessment of the level of risk, or the range of exposure, so you could only opine that the likelihood of any loss is "remote."

Thus, the public and your shareholders have had no knowledge of your internal investigation, your subpoenas from regulators, any of your findings, or likely range of regulatory fines or exposure. ABC has only responded to press inquiries that ABC had no involvement in any alleged wrongdoing; it takes any illegal activity very seriously and will work constructively with the regulators to answer their questions, but will vigorously defend any claims relating to these issues.

However, this morning you were on a conference call with the Board and they passed a resolution—supported by the full Board, Chief Executive Officer ("CEO"), and Chief Financial Officer ("CFO")—to have you contact your principle regulator and offer to resolve the matter with a fine of \$1 billion. You have advised the Board, CEO and CFO that the potential civil litigation risks could be many multiples of this fine. You feel it is very unlikely the regulators will accept this offer, but you do believe that ultimately the Company will decide to settle its issues with the regulators.

If you were to disclose the matter now the ABC stock would likely be hammered. No one knows for certain how the market will react, but it is very likely your shareholders would lose significant value in their investments. Lawsuits would fly in. Your personal equity in the company could crash, and your stock options, which are now “valued” at approximately \$12 million may be worth \$0 (and not likely to recover during their exercise period). And significantly, this would be substantially worse for your boss, the CEO—he could lose at least \$75 million in value—and your buddies and peers at the Company could lose almost all their life savings.

Your external auditors are indicating that they think it may be time to start disclosing this matter. You will really need to have ammunition to stop them from advising your Board if you think it is not time yet.

You just made the offer to the attorney for your regulator. She scoffs at it and responds: “Of course I will pass it along, but you are not in the right ‘zip code’ yet.” Immediately you call William Case, the senior partner at the large international law firm representing ABC on this matter, and during the call he tells you he feels “you have a reasonable argument to not disclose now.” Tomorrow the ABC second quarter earnings need to be publicly reported.

Just as you get off the call with William, the CFO (your good friend and weekly “tennis buddy”) walks in your office and says: “Based on that Board call today, no underlying facts have changed since yesterday, so I don’t plan to disclose this matter now. And, besides, it is too late to have my team update any numbers for the earning release.”

2.a. What additional work, if any, do you do prior to giving the CFO a response?

2.b. Based upon your current understanding of the facts and FAS 5, if you had to respond, what would you tell the CFO and why?

2.c. How should you have prepared the Board, your boss (the CEO), and CFO regarding the FAS 5 issue?

**Question 3. (20 points)**

John Adams is Senior Vice President - Law and is the one of your direct reports who is responsible for the ABC corporate law group. He leads a team of 30 attorneys that focuses on issues relating to securities, employment, merger and acquisition ("M&A"), tax, anti-trust and general corporate law. He is very well-thought-of within the company and as part of your annual succession plan is viewed as a successor to your position. Jill (another of your direct reports) may be a more likely successor, but it will truly depend on the needs of the Board and the Company if/when a successor needs to be chosen.

You just got off the phone with David Love, a partner from the executive recruiting firm Spencer Stuart. You know David well, since you were working with him a couple of months ago as you considered and interviewed for the general counsel job at Bank of America. David tells you that Goldman Sachs wants to make John an offer to be their General Counsel. David also tells you that John has authorized them to call you for a recommendation. Of course it would be a much, much better job than what John has now and would pay a ton more.

3.1 Should you give a recommendation of John to the recruiting firm? Why or why not?

3.2. Assuming you give a recommendation to the recruiting firm, what do you tell them are the reasons John should be chosen (*i.e.*, what skills/attributes does he have that will make him a successful in-house attorney)? Draft a short recommendation outlining the skills you believe are necessary for: (1) an in-house attorney position (do not focus on the substantive legal skills necessary—focus on the other skills/attributes); (2) a leadership/management position in corporate America; and (3) running a first class in-house legal operation.

**Question 4. (15 points)**

The head of your Human Resources Department and a fellow Executive Vice President, June Smith, walks into your office and you exchange the usual chit-chat. You and June have become great friends over your ten years at the company. You know she is in the middle of

building a new house, has three great kids in college (who are very close friends with your two children) and is counting on the Company's strong performance and the stock she owns to help in defraying the costs of the house and their education.

After chatting about last weekend when your families shared a place in Nantucket, June says:

“Hey, Hank, I am thinking of exercising about a hundred thousand of the options I have held that were issued at \$25 dollars. With our stock at \$50 I should be able to clear a profit of about a two and a half million dollars. Our Company’s ‘trading window’ is open now to sell stock; in fact Susan (a woman who works for June) exercised her options yesterday and made over one million dollars. I don’t have any non-public material information now, but of course I know I have to let you know before I put in this trade.”

ABC has a policy where all Executive Officers (which would include June) must pre-clear any stock trades with the office of the general counsel to ensure they have no inside information. Based upon the folks who have been “in the loop” on the likely settlement with the regulators and the significant accounting charge to be taken, you believe that June should have no knowledge of the matter. You quiz her carefully, asking if she has any knowledge of anything that could materially impact the financial condition of ABC or of any significant regulatory issues or proceedings. She is very open and makes it clear she is unaware of any, other than a couple of EEOC matters relating to employee terminations and a couple of discrimination cases, all having a potential exposure of less than a million dollars.

Of course you are aware of the law that provides criminal culpability for trading on inside information. "Inside information" is defined as material non-public information which would cause a “reasonable investor” to make the decision to buy or sell the stock of the company.

- 4.1 What additional information, if any, do you need to know?
- 4.2 How should you get the information?
- 4.3 Based on what you know, can June “legally” exercise the options?
- 4.4 What do you advise June she can do?

**Question 5. (10 points)**

You were just advised by the regulators that tomorrow they are going to issue their press release announcing that ABC has agreed to resolve their regulatory issues with a fine of \$1.5

billion. You are meeting with your public relations ("PR") team to determine how to respond to press inquiries. They are pushing for a response somewhat like: "We do not comment on matters relating to investigations or litigation." The other approach is to provide a spokesperson who will respond to the questions of the press.

If a spokesperson is chosen, the PR team recommends Jill Smith an employee in the PR department, since she really knows nothing about the matter and can keep any answers at a very high level. The other alternative is to use you as the spokesperson.

5.1 Should you go with the generic "no comment" answer? Why or why not?

5.2 Should you or Jill be the spokesperson on this issue? Why or why not?

**Question 6. (10 points)**

You get a call from one of the Vice Presidents, Jim Winters, who reports directly to you, and who is responsible for the Building Operations Department (nothing to do with law—the CEO has assigned a lot of "administrative" functions to you).

Jim asks you: "Did you go to the Building Operations Christmas Party last Friday?" You respond: "Yes." "Do you remember seeing Jill Silver there (a rather attractive administrative assistant)?" You respond "yes." You really don't know Jill Silver at all, have never had any real conversations with her, have never sent her any emails (other than those sent to the entire department), or had any relationship with her, other than to say "hi" to her in the hall. Frankly, you don't even know who she works for and have never had any influence on the terms of her employment, compensation, promotion, performance, etc. Jim goes on: "Do you remember giving her a hug as she left the party?" You respond: "Yes, we all had had a few drinks—the mood was festive and I hugged a lot of folks who left the party. Frankly, I was trying to show my affection and appreciation for their hard work all year." Then to your absolute shock, Jim says: "Well, Jill just left my office and told me that she felt your touching her was totally inappropriate and found it offensive. She is not certain she can continue to work for the Company."

6.1 Does Jill have a "legal" claim? For this answer I am indifferent to what the law is in the jurisdiction, but want your analysis and how you would figure this out.

6.2 How should you handle the matter?

6.3 Who, if anyone, should you inform or ask for assistance at this stage and why?

**Question 7. (5 points)**

You are interviewing candidates to head up your litigation team of 22 lawyers and 14 paralegals (John Adams got the Goldman job). Today you are interviewing Leslie Smith. Her qualifications on paper are consistent with all of the others and she meets the criteria of the job. You also have received very strong recommendations from respected inside and outside counsel with whom she has worked.

7.1 What three questions will you ask Leslie (list all three)?

7.2 When Leslie asks you, “Why should I work at ABC,” how do you respond?

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## **B. GEORGETOWN UNIVERSITY**

*When the class became largely based upon a final paper grade, topics had to be selected by the students and approved by the professors approximately 6 weeks after class began. The following is typical of suggestions ranging from very specific to rather general topics and students could develop something on their own subject to our approval.*

### **In-House Counsel: Law and Practice Guidelines for Papers**

As the title of the course suggests, papers for the class may address issues of either law or practice. Papers will be graded on the basis of substance, originality, thoroughness of research, and quality of writing. They should be typed and generally between 20 and 25 pages long, double-spaced. All papers will be due on December 21, 2012.

#### **Possible Topics for Papers**

- Establishing a new in-house law department: You are the first lawyer hired by the company and asked to set up a law department. How would you go about it?
- Efficient use of outside counsel: You have just been hired to replace the retiring general counsel of your company and have been asked by the CEO to attempt to reduce your expenditures on outside counsel by at least 25%. Your law firms all bill by the hour. What should you consider doing?
- Ethical issues in alternative billing arrangements: You are exploring the possibility of alternative or value-based fee arrangements with outside law firms. You think you understand the practical issues; what are the ethical issues (if any)?
- Lessons for in-house counsel from a recent corporate scandal: What went wrong and why from the perspective of the in-house lawyer.

- Attorney-client privilege for in-house counsel in [your choice of country or region other than the US]: Comparison of the law of attorney-client privilege as it applies to in-house counsel.
- The role of in-house counsel in compliance: What role should in-house counsel play in establishing and implementing a compliance program? If there is a Chief Compliance Officer, what should be his/her relationship with the Chief Legal Officer?
- Recent Developments in Corporate Governance: Policy, Requirements and Best Practices
- In-house counsel and new disclosure requirements regarding ESG
- In-house counsel in the crosshairs: Recent trends in the liability of in-house counsel in corporate misconduct scandals

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## V. SELECTED BIBLIOGRAPHY

*Here are some resources that you may find helpful. Additionally, as an ACC member, you may be able to arrange for ACC to provide students portions of the resources from the ACC website.*

### A. Corporate Counsel Guidelines, John K. Villa (Thomson Reuters, 1999-2011)

*Corporate Counsel Guidelines* reviews general principles unique to corporate counsel and applies them to possible real-life situations. A step-by-step chapter format summarizes an entire topic, explains the specific controlling legal principles, and shows how to implement the rules in real-world practice.

A joint project of Thomson Reuters and the Association of Corporate Counsel (ACC), this guide is broadly divided into eight sections:

- Attorney-client privilege
- Work-product doctrine
- Ethical issues
- Overseeing civil litigation
- Overseeing corporate criminal investigations and litigation
- Individual rights and liabilities of corporate counsel
- Certification and record-keeping obligations under Sarbanes-Oxley
- Inside counsels' Sarbanes-Oxley primer

The text addresses the latest developments in e-discovery, the latest developments in ethical issues for inside counsel, analysis of revised DOJ federal prosecution guidelines set forth in the *United States Attorney's Manual*, and revised federal laws and guidelines. Sample agreements, memoranda, and updates are included.

### B. Teaching Law by Design for Adjuncts, Sophie Sparrow, Gerald F. Hess, Michael Hunter

**Schwartz (Carolina Academic Press, August 31, 2010)**

Professors Sophie Sparrow, Gerry Hess, and Michael Hunter Schwartz, three leaders in the teaching and learning movement in legal education, have collaborated to offer a new book designed to synthesize the latest research on teaching and learning for adjunct law professors. The book begins with basic principles of teaching and learning theory, provides insights into how law students experience traditional law teaching, and then guides law teachers through the entire process of teaching a course. The topics addressed include: how to plan a course; how to design a syllabus and select a text; how to plan individual class sessions; how to engage and motivate students, even those tough-to-crack second- and third-year students; how to use a wide variety of teaching techniques; how to evaluate student learning, both for the purposes of assigning grades and of improving student learning; and how to be a lifelong learner as a teacher.