



The New World of the In-house Lawyer: Ethics, Duties, Bells and Whistles

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PROFESSIONAL CORPORATION

Topics

- **The failure of the Legal Department**
- **New audiences and heightened expectations**
- **Hotspots**
 - *Whistleblowers*
 - *Internal investigations*
 - *Aggressive accounting*
 - *Personal financial benefits*
- **Future battles**

The Failure of the Legal Department

- Unprecedented series of financial frauds: where were the lawyers?
- Perceived shortcomings
 - *Lawyers were co-opted by management into helping the schemes*
 - *Lawyers failed to uncover schemes that were massive and enduring*
 - *Lawyers did not go around management to the Board or the regulators*

New Audiences and Heightened Expectations

- **Scrutiny of lawyers' conduct**
 - *Spitzer and mini-Spitzers*
 - *SEC*
 - *Institutional investor community*
- **Privilege waivers**
 - *Will change nature of your relationship with your clients*
 - *Brodsky as star witness against Quattrone*
- **Up-the-ladder and out-the-door requirements**
 - *Status and prospects of Section 307*
- **Thorough documentation**
 - *Minutes*
 - *Notes*

Key Hotspots (Topics)

- **Whistleblowers**
- **Internal investigations**
- **Aggressive accounting**
- **Personal financial benefits**

Whistleblowers

- **Developing protocols and procedures**
 - *Triage*
- **Multidisciplinary approach**
 - *HR + disclosure + internal audit + psychiatric counseling*
- **Employment for life**
 - *Wells example*
- **Prudent risk management**
 - *Class action example*

Internal Investigations

■ Common patterns

- *Isolation of management team*
- *Zero risk tolerance by Audit Committee members*
- *Scope creep*
- *Delay*
- *Big restatement*
- *Wells example*

■ Useful principles

- *Assume full privilege waiver*
- *Expect SEC cynicism and skepticism*
- *Try to maintain sense of balance*
- *Drive toward completion*

Aggressive Accounting

- You must be the keeper of the WSJ test
- Understand SAB 99
- Run everything past the auditors and Audit Committee
- Disclosure cures all

Personal Financial Benefits

- **Recent restatements and issues involving employee options, especially executives**
- **Increasing scrutiny by institutional investors and others**
- **Enforce adherence to rules and procedures**
- **Be sensitive to appearance of greed**