

New York State Institute on Professionalism in the Law
and New York State Judicial Institute

Convocation on Lawyer Independence Challenges
and In-House Corporate Counsel

Keynote Address by Robert C. Weber
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1. Introductory Comments

Good morning, and thanks so much for inviting me here today; it's my distinct privilege to address such a distinguished group on such an important topic. Before I begin, however, let me acknowledge and thank the many public servants here today, public servants who dedicate their working lives to improving the justice system in New York. I won't attempt to recognize any one person by name for fear of overlooking someone else, but to all of you who work for justice in New York, thank you for your professionalism and your commitment. Thank you for being with us today; and rest assured you do make a difference in the lives of so many people across the Empire State.

And thanks to Paul Saunders, Chair of the Judicial Institute on Professionalism, for the invitation to speak here today. I really need say nothing about Paul, since he has had such a distinguished career and because his work on behalf of the Institute is so well known; but let me just note that, after all Paul has done for IBM over the years, I would be an ingrate indeed had I not accepted his gracious invitation.

Having accepted that invitation, however, I confess that I worried for a time that I had said yes in a moment of temporary insanity, since only someone bereft of his senses would believe that he could bring new and fresh insight to the group assembled here today. I'll leave it to you to determine how much of my senses I have retained, but I do hope that some small part of what I say will assist our thinking about these critical issues of lawyer independence, professional responsibility and the role of corporate counsel.

Let me also paraphrase the Second Circuit's own Learned Hand, to the effect that, as firmly as I believe in the points I am about to set forth, I also readily acknowledge that I could well be mistaken.

Before I set forth my observations on the independence of corporate counsel, however, I do want to make a slight semantic point, so that we distinguish between the terms independence and objectivity. We often confuse them in our common parlance, as they have common attributes, yet there are important differences as well. We New York lawyers know that our advice must be independent in the sense that it must be given to our client free of improper influence or inappropriate external considerations, including, perhaps especially, personal considerations. On the other hand, we also know that we are not independent from our client, because we are in fact obliged to represent our client's interest as fully as the law permits. On the third hand, as it were, and here is a difference that makes a difference, we know that lawyers have a special responsibility, if not an obligation, to maintain a sense of professional objectivity, so that we do not become intoxicated or misled by the enthusiasm of our clients for a certain result.

So with all that in mind, let me set out the four basic propositions that I plan to address today:

- First, I do not find persuasive the notion that in-house counsel are under greater threats to independence than lawyers at outside firms. I do not believe that any objective data set supports that notion, nor do I think that such a claim withstands the cold eye of real world scrutiny. threats to a lawyer's independence appear in a GREAT many places...regardless of where one practices; whether in-house or as we say, out-house; whether in a big firm in a big city or as a solo practitioner in a small town.

- Second, one very real threat to the perception of in-house counsel's independence sometimes comes from in-house counsel themselves—by too quickly referring controversial or high profile matters to outside counsel; indeed there are times when I worry that referral to an outside lawyer is less because independent counsel is needed, and more because someone in-house doesn't want to bear the heat of making tough and controversial decisions.
- Third, I believe that the general counsel does indeed have a unique role to play in the C-suite. I'll offer a few thoughts on what a general counsel—or any senior in-house lawyer—should do to demonstrate that he deserves to be a full participant in all the company's senior deliberations, whether the topics are strictly legal ones or not.
- And finally, I will set forth my objections to the assertion, often recited these days, that in-house lawyers are to serve as the conscience of the corporation. This is a pernicious concept; a concept that detracts from what does make the general counsel's voice unique; and a concept that in the practical world of the executive suite, seems designed to undermine the effectiveness of a corporation's chief legal officer.

With these themes on the table, I will digress for a minute to touch on a bit of my background, since it helps explain the shaping of my perspectives on these issues of lawyer independence and professional responsibility over my 36 years at the bar; time that includes about seven years in my current position at IBM, and before that, 29 years in active trial practice at a large law firm. This also included a term as president of a major metropolitan bar association, participation in a bar grievance committee, and appearances as lead counsel in two separate disciplinary

cases that proceeded to my former state's supreme court; one that I won and one that I lost by a 4-3 vote that still stings me today. So, I think I can fairly say that the professional responsibility of lawyers has been a subject on which I have thought, and worked, for many years.

2. Challenges to the Independence of Counsel

So with the recognition that I am the prisoner of my own experience, or more charitably said, that I've been enlightened by my experiences, let's turn to the issue of lawyer independence, the focus of today's convocation, and address the first of the four points I referenced a few moments ago. As I mentioned, I do reject the notion that in-house counsel are under greater threats to independence than lawyers at outside firms or, for that matter, than lawyers otherwise in private practice or even solo practitioners. In saying this, I am not minimizing the threats to an in-house lawyer's obligation to render independent legal advice; those threats are real and lurk in many places we can all describe, rather I am rejecting the notion that the threats presented to those who practice in-house are demonstrably greater than those presented to other lawyers.

In fact, these concerns about lawyer independence are neither limited to in-house counsel nor are they new. To illustrate both these points, please allow me to call upon the voice of yet another fabled New York lawyer, himself a contemporary of Judge Hand whom I referenced earlier; here I refer to Felix Frankfurter, who penned a memoir over 50 years ago that included a richly descriptive portrait of how a lawyer can lose his professional soul in service to a demanding client; the quote deals with observations Frankfurter made early in his career regarding a railroad tycoon and his cadre of lawyers; and here is what Frankfurter had to say: "The way Mr. Harriman spoke to his lawyers, and the boot-licking deference they paid to him! My observation of this interplay between the great man, the really powerful dominating tycoon, Harriman, and his servitors, the lawyers, led me to say to myself, "If it means that

you should be that kind of a subservient creature to have the most desirable clients, the biggest clients in the country, if that's what it means to be a leader of the bar, I never want to be a leader of the bar. The price of admission is too high....to my poor little eyes way down in the valley it was very influential in making me think how one wants to spend his life, what the profession of the law is and what it isn't, what one is ready to do and what one is ready not to do. That's the story of how I decided not to become a leader of the bar."

As we know, the private bar's loss eventually turned into gain for academia and the judiciary, but Frankfurter's broader point is perfectly valid today, although the situation he observed occurred close to 100 years ago.

In our day, the most commonly cited argument about the particular threat to independence for the in-house lawyer is also what I believe to be the least critically analyzed argument, and that is the claim that the in-house lawyer cannot in fact be independent or objective because he is employed by one and only one client, with his livelihood dependent on that one client. This is a theme one sees again and again; it is in fact the argument adopted by the European Court of Justice in the Akzo Nobel Chemical case where that court held that Europe's version of the attorney-client privilege did not apply to in-house counsel because attorney independence was lacking; a neat if unpersuasive example of ipse dixit legal reasoning.

Here in the United States this claim is more often found in the literature, unaccompanied by empirical evidence; and purportedly supported by a series of assumptions and rhetorical comparisons to the outside lawyer who, it is said, is in a meaningfully different position because she can better spread her employment risk across multiple clients and multiple client engagements.

I respectfully disagree. Let me first look at outside lawyers, and start with those in the larger firms. In the large law firms of today, where lawyers have so-called books of transportable business they auction among bidding law firms, the financial future of many of these lawyers depends upon their ability to retain that book of business for that client. That book of business directly affects their compensation in the firm, their significance and power within the firm and it is their vehicle for driving off from one firm to another in search of a higher payout or, in the euphemism adopted by so many, as they search for a “better platform for my practice.” So at least for these lawyers, and they are far more common than one may think, their employment risk is not at all diversified; rather it is highly contingent upon their ability to retain the work of a core group of clients.

The burgeoning literature on the business of law demonstrates this point in spades. Firms of all sizes now employ metrics against partners based on how much revenue the partner brings to the firm, how much profit the partner may generate, how much new work the partner brings in, etc., etc. many of today’s law partnerships are far cries from true professional partnerships; instead they have become commercial commitments contingent upon convenience, ready to be jettisoned from the firm’s side when a partner’s billings decrease or she becomes less competitive; or from the lawyer’s side when she decides to trade in her old partners for a new group of partners who promise her more compensation and recognition. This is not to lament the state of modern day practice, a worthy topic but one for another day, but rather to say that the notion that we in-house lawyers face a greater threat to our independence than do external lawyers is both anachronistic and unrealistic.

Nor is my point limited to big firms or headline-making-laterals; it applies to the less publicized partners—the so-called “service partners,” yet another interesting term from today’s legal literature; and to

practitioners in the small towns across America. No one wants to lose a client once gained, and few partners who are not in possession of their own book of business wish to antagonize law firm management, particularly in the current environment where, at least insofar as paying clients are concerned, it appears we have too many lawyers seeking work from too few opportunities.

We who are in-house are in no way immune from threats to independence, but these threats come not from who employs us. The real threat to independence—whether we are speaking of independence to render advice, independence to tell the CEO he or she is wrong, independence to mediate disputes in the executive ranks or independence to halt wrongdoing, whatever the context for the exercise of independence—the real threat comes from within the lawyer herself. Is our in-house lawyer so concerned about her position, her executive status or her compensation that she dare not venture a contrary opinion and becomes in Justice Frankfurter’s vivid term, a “subservient creature”? Is our outside lawyer, in a firm large or small, so concerned about her clients and partners in the law firm that she does not risk giving unwelcome advice? Is the senior associate on track to make partner prepared to say no to the client on whom his advancement to partner may depend? Is the solo practitioner in a small town prepared to bear the town’s opprobrium for a controversial representation? Is our hypothetical lawyer’s financial situation—no matter where employed or by whom—such that being terminated, or losing a big client to another lawyer, or not making partner, would be not only embarrassing but financially disruptive, not to mention potentially ruinous?

These and countless similar questions make plain—to ME in any event—that it is not the employer or the partnership or size of the law firm that affects the independence of a lawyer’s advice...it is, instead, more mundane motives of the type laid bare for us centuries ago by the likes of Sophocles and Shakespeare; motives such as human pride,

hubris and selfishness. These observations are neither original nor new, and they are surely not limited to those who practice law. We could quote any of the great philosophers or religious leaders, but I'll quote only two of my favorites, starting with the Roman poet Horace who wrote "He will always be a slave who does not know how to live upon a little." Or from a more modern perspective, listen to Upton Sinclair, who—in a wonderful quote—said "It is difficult to get a man to understand something, when his salary depends on his not understanding it." These quotes, one rather lyrical and the other darker and cynical, make the point crystal clear: we can lose whatever independence we may have because we fear losing money, status or livelihood, not because of where we work.

Sadly, some of our professional colleagues have—again regardless of where they work—lost sight of who we are as lawyers and why we do what we do; or, as Justice Frankfurter noted, they stopped thinking about "what the profession of law is and what it isn't, what one is ready to do and what one is not ready to do." Here I am only saying that regardless of where we work, our bulwark against a loss of independence must be our sense of professionalism in who we are and what we are ready to do. We are and must remain a profession; a profession that in its roots is engaged in a public service that, as Dean Pound said many years ago, "is no less a public service because it may incidentally be a means of livelihood." And that word "incidentally" is pregnant with meaning.

Now perhaps because I had good mentors who gave me more attention than I deserved way back when I began to practice law, I was taught that lawyers always needed to be prepared to be fired. I was told that, in any long legal career, there would inevitably be times when a client would fire me and that I should always be prepared to give my advice and bear whatever the consequences would be. Over time, there were indeed occasions when clients did not like my advice, times when they simply chose not to follow my advice, and some few occasions

where I was never clear why they switched lawyers, but in all these situations, I always went back to the definition of what it means to be an attorney. That very word, attorney, has its roots in the concept of agency; with the lawyer being a special kind of agent in the areas defined by our professional rules. And as a matter of agency, what has always been clear to me—then and now—is that the client is the principal and the lawyer is the agent; with the principal free to discharge the lawyer for good reason, bad reason or no reason; all because the client should always have the right to discharge the lawyer....subject of course to some few exceptions not relevant to this topic.

The corollary to this principle from the lawyer's standpoint is that we must have the mindset of a baseball manager; always prepared to be fired. This may be my only original contribution to the discussion of the independence of in-house lawyers, although I hesitate to claim it as original since I'm certain others have used this approach as well. When I first met with my CEO, I explicitly confirmed to the CEO that my client was the company, and that as CEO of the client he had the client's prerogative to fire me for good reason or no reason, with notice or without notice, at whatever time he decided he would like a different lawyer; and I should add here just to be clear that this was not some empty gesture, since at IBM we senior executives do not have employment contracts, nor do we have parachutes, golden or otherwise. In my time at IBM, I have been privileged to work with two extraordinary CEOs, Sam Palmisano and now Ginni Rometty, and I had this very conversation with each as we began our CEO/General Counsel relationship. To them, it communicated that I understood clearly who was the principal and, for me, it was a declaration of independence of sorts, demonstrating that I had no expectation other than that I would give them my best effort and advice and that I would do so fully prepared for whatever the consequences might be. In neither case, did we ever touch on the topic again...but my CEO and I do understand each other on this important point.

3. The Flight to Retain “Independent Counsel”

My second point today is that, at times, in-house lawyers themselves act as if they do not believe they are independent. Everyday we see examples where an allegation, issue or claim arises regarding an institution, and we see that in-house counsel or the board retain external counsel to do an “independent investigation.” Now there are certainly times when an outside counsel may be advisable and even necessary because of the demands of a regulator or because of an issue of perception or where the board or management find the in-house staff or general counsel to be feckless. But there are many, perhaps even most cases, where the general counsel should be fully prepared to manage the inquiry herself, to make the tough calls herself, and, most importantly, to take on the responsibility herself.

I analogize this in my mind to the judicial doctrine of a court’s duty to sit; and while the analogy cannot be stretched too far, I think we general counsel have a duty to do our jobs in highly charged and controversial matters. Indeed, in those tough and highly charged times our responsibilities and obligations may be at their greatest. There have been any number of high profile issues involving questionable CEO behavior in recent years—too many to be sure—and while in many cases the legal or fact finding tasks were outsourced to external counsel, there were also a good number where a courageous general counsel managed the situation herself and, let the facts determine the results, as well they should; and in those matters those general counsel gave credit to their independence and professionalism.

It is, of course, the long-term best interest of the client that should provide the guiding principle for how matters of this type should be handled. Obviously if the general counsel herself were implicated or involved in any way or where a cynical and distrustful regulator demanded an external referral, the decision to go outside would surely

be clear; but too often we see an immediate referral to outside counsel when allegations arise against a CEO or other members of senior management; or when allegations of corruption are made... and in these situations, I give a respectful salute to those general counsel who do not reflexively conclude that an outside voice is needed, but rather take a sober, mature and fact-based approach in deciding whether or not the matter is best managed by herself, or by herself with the assistance of an outside firm, or whether the matter is handed over to an outside firm.

It is, in summary, sometimes easy to say that a task demands an outside voice, when what it really needs is a courageous voice, one prepared to grapple with a difficult issue and to live with the consequences of doing so.

And while on this topic of referrals to so-called independent counsel, I would like at some point to see some meaningful analysis done as regards instances where referrals to external counsel have been made; I think fair questions can be asked, for example, as to whether external counsel operate as efficiently and productively when retained as independent counsel as they do when retained and managed by knowledgeable inside counsel; and is it in the shareholders' best interest to ask outsiders who have none of the relevant background to educate themselves at the shareholders' expense when there are respected professionals inside who could do that work? Again, these and many related questions deserve more disciplined analysis than I believe has yet been provided by the literature, the regulatory community or the courts.

4. Becoming an Essential Legal Advisor

Let me move now from independence per se to my third point, and describe some of the traits that make for a successful senior in-house lawyer. A good place to start the discussion is by recognizing that body of literature, a body both thoughtful and substantive, that has arisen in

the past few years regarding in-house lawyers in general and the role of the general counsel in particular. We now have—if you can believe it—magazines, blogs and social media sites devoted to those who practice law on the inside of institutions, and some of this—and I do mean some of this—is actually quite valuable and well done. No one source aspires to present as comprehensive and formal a review of these issues, as does the volume entitled *Indispensable Counsel*, co-authored by Christine Di Guglielmo, one of our participants here today, who will be presenting after the lunch break. Christine's book, co-authored with former Delaware Chief Justice Norm Veasey, takes the reader on a soup to nuts tour of the in-house landscape, with numerous citations to interviews with public company general counsel, professors and others.

We must also acknowledge a debt to the legal thought leaders and thought provokers who have so capably brought these issues of in-house professionalism to the forefront over the past decade. Here we must, of course, note the work of Ben Heineman, a body of work that almost by itself forced both business leaders and their lawyers to acknowledge the special characteristics of the role of the in-house lawyer, and then to undertake a thoughtful analysis of the implications of that role. These thought provokers—a term I much prefer to thought leaders—have argued quite rightly for a broad acceptance of the general counsel as a full partner at the leadership table in public companies. Ben Heineman's arguments in this regard need not be repeated here as they are now quite familiar, so all I will note is that his fundamental thesis is perhaps best captured by his assertion that the first question a general counsel must address is, *is it legal*, and that she then needs to be a full participant in the follow on discussion of *if it is legal, is it right*.

These notions are instructive, fundamentally right-minded, and I fully endorse them. Indeed, based upon my interactions with many other general counsel, both individually and in groups, there is no dispute whatsoever about this, and it is now the accepted model in practically all

significant companies and institutions. To be sure, there are still some oddities where the legal function is marginalized or in today's vocabulary disrespected, as in some few companies I've heard of where, for example, the general counsel doesn't report to the CEO but actually reports to an administrator or, most surprisingly, to a financial officer, but oddities of this type are so out of step with the mainstream that they only seem to prove the validity of the broader rule.

So if general counsel are indeed to take our place at the senior table, how do we get there? Here again, I go back to basics. Like everything else in the profession of lawyering, we take our place at the senior table by earning that trust, each and every day, just like outside lawyers in law firms have to earn the trust of their clients, and just like lawyers have earned the trust of clients over the centuries. This topic of how we earn that trust is a rich one, also worthy of another discussion on another day, but let me offer up four basic rules for earning your place at the table as the essential advisor to your company:

1. First, never lose your discipline or your willingness to get your fingernails dirty. So very much of what we do and render advice about lies in what I call the "it depends" world. It depends on this fact or that fact or this context or that context. And it can be tempting for a general counsel to stay at a level of thirty thousand feet, and live in the world of "it depends." Tempting, but surely wrong. A modern general counsel must be prepared to be the master of the pertinent facts, and to do that requires discipline more than anything else. If you have as good a grasp on the facts as is possible in the context, you can leave the world of "it depends," and use your maturity and judgment to give the client meaningful advice.

2. Second, always make sure to separate your legal advice from your business advice or, what I call, your prudential advice. The client deserves your very best legal advice, in crisp fashion and with only so much detail as is necessary to make your advice comprehensible and able to be acted upon by a sophisticated businessperson of good faith. Then offer your non-legal advice, again in clear terms, taking care never to conflate or confuse the two. When these two become intermixed, the legal advice moves from the realm where it must be listened to, to another realm where your voice is robbed of its uniqueness and becomes but one of many. Again, our clients deserve our advice on these questions of is it legal and is it right; and they deserve those answers in a way that makes it clear which question we are addressing.
3. Third, always be objective in your analysis, but never confuse your objectivity with independence. This is a point I touched on earlier but it bears repeating. As an in-house lawyer, your opportunity to offer objective analytical advice may well be unique among your peers; you are, by training, and position, more able to examine an idea from all sides and to offer either support, criticism or modifications. Your advice must always be cold blooded as regards the facts; accepting them for what they are and never assuming they are what you wish them to be. You must maintain this objective analytical foundation...even though you are not independent in the sense that you do in fact represent your client and must represent it with zeal.
4. Finally, always remember who is the client, and be an advocate for the best long term interests of your client. Just as the conflation of legal advice with business advice so easily entraps many in-house lawyers, so too do many

lawyers cause themselves so much trouble by forgetting who the client is. In my years of private practice and my years engaged in the lawyer discipline process, I can say with certainty that more trouble, consternation and ruined professional careers have come from violating this one rule than any other. It is here where some in-house lawyers do go wrong; thinking that the business unit in which they work or the business leader they counsel is the client. From the perspective of an in-house legal manager, I can tell you that we at IBM spend substantial time keeping this issue in the forefront of our global team. Indeed, when I joined IBM, I used the occasion of my first presentation to the assembled lawyers to speak on this very topic—who is the client—and I emphasized that the client is not the business leader you counsel, or the business unit you advise, or the transaction on which you work. It is IBM, first, foremost and forever.

5. I'm No Jiminy Cricket

So now let me briefly touch on the fourth and final topic I said I would address—this new notion that the law department or the general counsel should be the conscience of the company. As I mentioned, everyone now accepts that the general counsel should be an essential advisor at the senior executive table. As with many good ideas, however, this description of the general counsel as both senior legal counselor and full executive participant has become, for some people, merely a launching point for a very different and more expansive vision.

Like the proverbial frog in the hot water who does not realize his peril until it is too late, I think that some of these new descriptions of the general counsel will, by increment, create a distorted set of perceptions and expectations that may actually diminish the voice of the general counsel. Let me start with Ben Heineman's belief the in-house counsel

should be a lawyer/statesman. I confess to being slightly uncomfortable with this notion, but I can accept that term insofar as it attempts to capture the notion the general counsel can play a special role as the executive suite's honest broker. After all, a trusted general counsel is often the natural intersecting point for the resolution of disagreements among other senior executives or corporate functions...not only because the CEO often views such intramural disputes with all the enthusiasm of a parent being asked to resolve a fight between children about crayons, but also because the other executives come to the general counsel to raise these issues in what they believe is a protected, perhaps even privileged context. So "lawyer/statesman" is a term I can accept in that context, particularly because the "statesman" reference again hearkens back to the lawyer as agent, acknowledging that the general counsel has an agenda far broader than her own; an agenda that allows her to be the honest broker in resolving the occasionally fractious debates that arise in corporate headquarters.

My discomfort on these new and expanded descriptions of the role of general counsel increases considerably, however, with those who describe the modern general counsel as the "guardian of corporate integrity," primarily because I have no idea what that means. And I explicitly part company with those who now assert—and there are many of them—that the general counsel should be described as the "conscience of senior management," or, even more troubling to my mind, "the conscience of the company."

Few concepts could be as destructive to the lawyer's right to sit at the senior table as it is to place around the lawyer's neck the millstone of being the company's "conscience." And even more debilitating to the effectiveness of a general counsel would be the senior team's belief or perception that a general counsel actually believed she was the conscience of the company, or even worse, acted like it. I cannot imagine what it would be like to act that way, but it certainly takes no

imagination for me to say that if I did act that way, my tenure as general counsel would be short-lived...and justifiably so.

This notion of being the conscience of the company is flawed in so many respects that it is hard to know where to start, but let me try. First, despite appearing to be the product of more modern thinking about the lawyer's role, this notion of lawyer as conscience or guardian of integrity actually reflects more of the long rejected and hoary thinking of lawyers as some elite group of illuminati or philosopher kings, dispensing rules and prescriptions to the benighted; it reflects a lawyer-centric view that assumes lawyers have special insight, or perhaps even monopoly, into ethical rights and wrongs.

Again, I disagree. There is nothing in my training as lawyer that makes me better or worse suited on matters of conscience than any other senior leader at my company, and for me to claim such a position, or better put, to pretend to take such a role, would give rise to well founded resentment and criticism from my peers. At the senior table at our company, I see a number of gifted men and women, each of whom has, among other positive attributes, a well formed conscience, and a personal compass well attuned to our company's values and beliefs. They need me to be many things for many reasons, but serving as their conscience is most definitely not one of them.

Viewed correctly, a company's ethical heartbeat, its governing ethos, should reside in no one person or any one function. The company's ethos, its moral compass, should be ingrained in every person and every function, as part of the corporate DNA. To say that the law department or the general counsel is the "conscience of the company" allows the rest of the company to think that these issues are primarily the responsibility of others, thereby obscuring what should be a thoroughly pellucid governing principle of institutional life: everyone is part of the institution's moral construct and everyone is responsible

for the observance and execution of the company's values....not only or even especially the lawyers.

Now I want to be clear here on one subsidiary point; we lawyers are of course expert in legal ethics and in so many respects it is true that legal ethics and the law itself reflect broader ethical norms such as loyalty, discretion and honesty. I am in no way eschewing that ethical responsibility. Rather I am only noting that when it comes to business ethics or societal ethics, I am but one voice, and not necessarily the authoritative voice.

Perhaps more fundamentally, the descriptor of the general counsel as the conscience or guardian of the company leads to fuzzy thinking. We as lawyers are trained in a certain discipline and in a certain way of thinking. On the question of "is it legal," we have a special responsibility and authority to find the right answer, to explain it, and others should and, in many cases, must listen to us.

But when we take on the role of conscience to the company, we abandon the disciplined confines of legal reasoning and become just another voice in the cacophony of modern day would be ethicists; the unique nature of our voice and opinion becomes diluted to the point of being unrecognizable; and we will eventually find ourselves reduced to the status of the chattering heads on television, arguing back and forth in today's version of hell.

So let me wrap this topic up with as clear a statement as I can make on this issue of the general counsel as the conscience of the company: I have never been, am not now, nor will I ever be, IBM's Jiminy Cricket.

6. Conclusion

So with that, and with the admonition that we should always let our conscience be our guide, let me wrap up by saying that these topics of independence for all lawyers, including general counsel and inside lawyers, are topics that call for our profession's best and brightest to analyze them, explore boundaries and develop new prescriptions for the future. I am certain that over the course of today, this convocation will play a meaningful role in that critical task.

Thanks...