

FOREWORD

WHO'S IN THE HOUSE? THE CHANGING NATURE AND ROLE OF IN-HOUSE AND GENERAL COUNSEL

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Introduction	237
I. Factual Background	238
II. Who's Really in the House? In-house Counsel Trends and Their Implications	244
A. The Machines Will Drink Your Milkshake	244
B. Getting Comfortable	245
C. Early-stage Companies Are Often Run by Early-stage People	247
D. Going Global	248
E. Foreign Corrupt Practices Act	249
Conclusion	250

INTRODUCTION

This issue of the *Wisconsin Law Review* addresses one of the most important, if subtle, aspects of larger changes in the marketplace for legal services: the changing nature and role of in-house and general counsel.

A large body of recent literature (notably a 2010 article in this review)¹ argues that the dominant model of the private practice of law—large full-service law firms—is probably unsustainable. The financial crisis of 2008–2009 radically reduced the amount of financial services

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The Symposium at which these papers were originally presented would not have been possible without the extraordinary dedication, support, and hard work of many people, including Symposium Coordinator Pam Hollenhorst, Symposium Editors Elizabeth Sanger and Nate Inglis-Steinfeld, Law School Dean Margaret Raymond, and the members of the Wisconsin Business Law Initiative.

1. Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749.

work that kept many lawyers busy and wealthy. “Few industries have suffered more visibly from the financial meltdown of 2008–2009 than the nation’s largest law firms (what this Article refers to as ‘Big Law’),” Professor Larry Ribstein opined in these pages in 2010.² Yet, these problems run deeper than the financial crisis. A variety of larger systemic changes, including in technology, globalization (outsourcing), and client cost consciousness, suggest that the future for the dominant model is bleak.³

To date, much of this work has focused on the supply side: what is happening to the sellers of legal services? If, as seems to be the case, the supply side is changing, it would be reasonable to expect to see change on the demand side as well. This Symposium issue of the *Wisconsin Law Review* builds on this literature by focusing on the demand side. Since the demand side is significantly influenced, if not determined, by in-house and general counsel, that is where the authors who have contributed to this Symposium look.

This Foreword briefly sets the stage for the balance of the issue, providing some factual background on changes in the role and function of in-house counsel. It also summarizes some of the highlights of the works that follow.

I. FACTUAL BACKGROUND

The roles and duties of in-house counsel have changed significantly since the early decades of the twentieth century. As their functions changed, the views and prestige of in-house counsel also changed. Although disparaged and only moderately utilized for decades, in-house counsel now play important roles in the market for legal services. They perform a significant amount of companies’ legal work and act as gatekeepers for companies’ outsourcing of work to law firms.

In the first half of the twentieth century, in-house counsel held positive reputations and status. That status fell as corporations began looking to outside counsel for their legal work. In the 1930s, in-house counsel acted as both lawyers and business advisers and were well regarded and compensated by senior management.⁴ The role of in-house counsel began to decline in the 1940s, however, as large law firms

2. *Id.* at 751.

3. *Id.* at 752 (“[B]etter-informed clients and intensified competition in the global market for legal services, now threaten Big Law’s already precarious equilibrium.”).

4. Deborah A. DeMott, *The Discrete Roles of General Counsel*, 74 *FORDHAM L. REV.* 955, 958 (2005).

sought to control corporate representation, thus limiting in-house counsel duties to routine matters.⁵ During this time and well into the 1960s, in-house counsel were viewed as inferior lawyers who failed to make partner at the outside law firms being used by the corporation.⁶ Even in the 1960s, the companies who had in-house lawyers only had a few, and these lawyers generally gave a significant amount of legal work to outside counsel.⁷

With the increasing costs of legal services in the 1970s, in-house counsel's responsibilities expanded and corporate legal departments grew.⁸ Corporations increased the size of their legal departments, which allowed the in-house lawyers to perform many of the typical, predictable legal services for the corporation.⁹ The number of lawyers working in-house increased by forty percent between 1970 and 1980.¹⁰

In the 1980s, the in-house counsel's role in the corporation increased significantly.¹¹ In-house lawyers not only acted as lawyers, but also became active in management.¹² They performed routine legal services, counseled the corporation on regulatory requirements, created compliance programs, and managed and reviewed outsourced legal services for the corporation.¹³ In-house legal departments had greater control over the hiring of outside law firms and began spreading outsourced work across many firms in order to foster competition and drive down costs.¹⁴ Corporations also began recruiting well-regarded

5. *Id.* at 959.

6. *Id.* at 959–60; Omari Scott Simmons & James D. Dinnage, *Innkeepers: A Unifying Theory of the In-House Counsel Role*, 41 SETON HALL L. REV. 77, 79 (2011).

7. Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 78.

8. George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635, 1654–57 (2006); Jonathan P. Bellis, *The Evolving Role of In-House Counsel: Adding Value to the Business*, reprinted in HILDEBRANDT INTERNATIONAL 1 (2003); Abram Chayes & Antonia H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277, 277 (1985); DeMott, *supra* note 4, at 959–60.

9. Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 EMORY L.J. 1057, 1059 (1997).

10. *Id.*

11. Tanina Rostain, *General Counsel in the Age of Compliance: Preliminary Findings and New Research Questions*, 21 GEO. J. LEGAL ETHICS 465, 470–71 (2008).

12. See John Gibeaut, *The Outside Looking In*, A.B.A. J., Aug. 2004, at 46, 46, 48; Daly, *supra* note 9, at 1061–62.

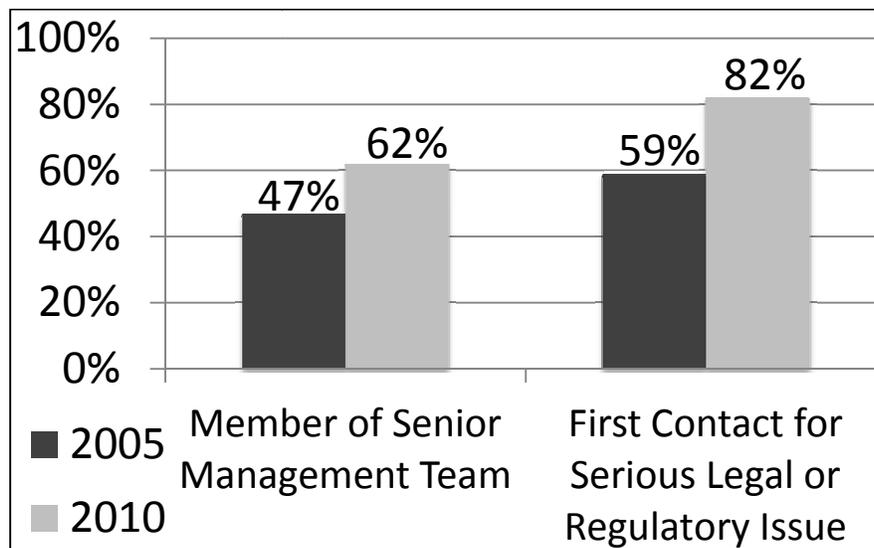
13. Daly, *supra* note 9, at 1061–62.

14. Baker & Parkin, *supra* note 8, at 1654–56; Rostain, *supra* note 11, at 470.

partners to join their legal departments.¹⁵ Between 1980 and 1991, the number of lawyers working in-house increased by 33%.¹⁶

So too did their status. According to Deloitte, the number of in-house attorneys who are a member of senior management teams has risen over the past five years from 47% to 62%.¹⁷ The percent of respondents who would first consult with corporate counsel if a serious legal or regulatory risk arose within the organization is also on the rise, moving from 59% to 82% over the past five years.¹⁸ External law firms' influence fell from 35% to 14% in the same time period.¹⁹

Figure 1: In-house Counsel Status



Source: Deloitte²⁰

The economic downturn in the early 1990s, coupled with increasing internal and external legal costs, changed expectations

15. Rostain, *supra* note 11, at 470.

16. Daly, *supra* note 9, at 1059.

17. DELOITTE, DELOITTE GLOBAL CORPORATE COUNSEL REPORT 2011: HOW THE GAME IS CHANGING 8 (2011), available at http://www.deloitte.com/assets/Dcom-Australia/Local%20Assets/Documents/Services/Forensic/Deloitte_Corporate_Counsel_Survey.pdf.

18. *Id.* 10.

19. *Id.* 14.

20. *Id.* 8, 10.

around corporate legal functions.²¹ Legal departments grew to be part of the corporate-wide management team.²² The legal department had to account for its costs and every lawyer had to add value to the company to justify his or her presence in the department.²³ But with increased work came increased power. By bringing a significant amount of work in-house, corporations were free to select specialized law firms to handle their outside work without facing the informational barriers and costs that often prevented such moves in the past.²⁴ The outside lawyers' power was being reduced, and law firms now had to compete for the work companies sent to firms.²⁵ Further, outside law firms often had to cut fees and submit to supervision over their work.²⁶ In-house counsel now occupied a powerful position, acting as both a key player in the business and as the guardian of the company's reputation and values.²⁷ Outside counsel now reported to the in-house counsel and depended on them for key information about the client's needs.²⁸

With the rise of multinational corporations and expanding globalization, the possibility of fraud, ethical failures, and legal scandals within corporations grew.²⁹ To address the concern over inadequate corporate governance, legislatures and governments attempted to remedy the perceived errors with many new business laws and regulations.³⁰ Until the 1990s, corporations were only subject to the same penalties individual defendants faced, and no federal criminal laws existed to incentivize companies to comply with business laws and regulations.³¹ Further, corporations were strictly vicariously liable for employee crimes committed within the scope of their employment and, therefore, corporations were resistant to adopting compliance programs that might uncover damaging evidence.³²

Federal corporate criminal law, however, had changed by the mid-1990s. Under the new laws, corporations could benefit from adopting compliance programs.³³ Further, criminal regulations targeting business

21. Bellis, *supra* note 8, at 1.

22. *Id.*

23. *Id.*; *see also* Gibeaut, *supra* note 12, at 46.

24. *See* David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship*, 78 *FORDHAM L. REV.* 2067, 2080–81 (2010).

25. *Id.* at 2081–82.

26. *Id.* at 2082.

27. *See id.* at 2084.

28. *Id.*

29. Simmons & Dinnage, *supra* note 6, at 99.

30. *Id.*

31. *Id.* at 100.

32. *Id.*

33. *Id.* at 101.

practices like corruption, consumer and employee safety, and environmental protection increased the risk and cost of criminal violations.³⁴ Under the new laws, if a convicted corporation had an effective compliance program, the Federal Sentencing Guidelines for Organizations reduced the criminal fine.³⁵ Similarly, amnesty programs, coupled with incentives and immunities for whistleblowers, heightened the risks for corporations, which now had an added interest in identifying criminal behavior.³⁶ The Sarbanes-Oxley Act in 2002 continued this trend, enhancing auditing requirements for publicly traded corporations, leading to increased attention on internal controls and legal compliance.³⁷

With the changing legal landscape, the need for in-house legal counsel increased significantly.³⁸ The legal skills and greater internal expertise of in-house counsel helped corporations control costs and manage legal threats.³⁹ In-house counsel assisted corporations in detecting actions within and by the corporation that could lead to corporate liability.⁴⁰ Further, in-house counsel could advise clients on a daily basis regarding compliance issues.⁴¹ Although law firms offered these services, the costs of legal compliance expanded, and in-house counsel provided a lower cost alternative.⁴²

In the early 2000s, the stock market crash, unemployment, and the September 11, 2001, terrorist attack further changed the legal market. These affected both individuals and businesses, and companies reacted to this change by cutting costs.⁴³ This, in turn, meant in-house legal departments needed to reduce spending.⁴⁴ As corporations sought to reduce legal costs, in-house legal departments began handling a greater portion of the corporations' duties.⁴⁵ Currently, controlling spending on outside legal work is a top priority for in-house counsel.⁴⁶ Over the last decade, corporations have been using in-house lawyers to complete

34. *Id.*

35. *Id.*

36. *Id.* at 102.

37. *Id.* at 104.

38. *Id.* at 99.

39. *Id.* at 105.

40. *Id.* at 102.

41. Daly, *supra* note 9, at 1061; *see* Simmons & Dinnage, *supra* note 6, at 105-06.

42. *See* Simmons & Dinnage, *supra* note 6, at 99.

43. Gibeaut, *supra* note 12, at 46.

44. *Id.*

45. Baker & Parkin, *supra* note 8, at 1654.

46. *See* Steven L. Schwarcz, *To Make or to Buy: In-House Lawyering and Value Creation*, 33 J. CORP. L. 497, 503-506 (2008).

more and more of their transactional work.⁴⁷ One survey shows that about sixty-eight percent of transactions are currently performed in-house.⁴⁸ Between 1997 and 2006, the 200 largest law departments in the United States increased their number of in-house counsel by an average of 4.8% per year.⁴⁹

Today, the demand side—the buyers of legal services—call most of the shots. In-house counsel decide what work should be performed in-house and which firms should be used for outsourced work.⁵⁰ While most routine transactional work is kept in-house, specific types of matters tend to be outsourced. Litigation is the largest legal service for which corporations utilize outside counsel.⁵¹ Corporations typically outsource matters that are large, complex, or specialized.⁵² Additionally, they use outside law firms when their legal departments need extra capacity.⁵³ Finally, companies refer work to outside law firms for their geographic scope and regional expertise.⁵⁴

In a sense, we have gone back to the future. In the early part of the twentieth century, in-house lawyers were well respected and highly compensated. As private law firms grew in size and stature, however, they in effect took work from their clients. In-house counsel came to be viewed as inferior, handling limited, routine tasks. With increasing costs, economic downturns, and new business regulations, however, in-house lawyers benefited by gaining significantly more legal work in both business transactional and compliance areas.

In-house lawyers today are again well respected in their field for their internal expertise and management, and they maintain a large degree of control over corporations' legal work. As one author has noted, "Today the [in-house counsel position] attracts well-known partners from elite corporate firms, typically carries a senior title within the corporate hierarchy, and is associated with significant prestige within the legal profession."⁵⁵

47. *Id.*

48. *Id.*

49. *Analysis of the Legal Profession and Law Firms (as of 2007)*, HARV. L. SCH. PROGRAM ON LEGAL PROF., <http://www.law.harvard.edu/programs/plp/pages/statistics.php#wlw> (last visited Nov. 7, 2011).

50. Schwarcz, *supra* note 46, at 500.

51. Simmons & Dinnage, *supra* note 6, at 126.

52. Baker & Parkin, *supra* note 8, at 1655.

53. *See id.*

54. *Id.*

55. Rostain, *supra* note 11, at 465.

II. WHO'S REALLY IN THE HOUSE? IN-HOUSE COUNSEL TRENDS AND THEIR IMPLICATIONS

The contributions to this Symposium capture and interpret many of these important changes chiefly from the perspective of those driving the change: in-house and general counsel. The works that follow help paint a picture of the nature and consequences of the changes in the in-house counsel role covering, among other things, changes in the market for legal services; in-house counsel and crisis prevention and management; how (and how often) startups use in-house counsel; in-house counsel overseas; and the special set of concerns for in-house counsel created by the Foreign Corrupt Practices Act. While every paper makes a thoughtful contribution to the literature on in-house counsel (and, by inference, literature on professionalism and the market for legal services), a few highlights follow.

A. *The Machines Will Drink Your Milkshake*

Professor Ribstein's *Delayering the Corporation*⁵⁶ continues to build a model of the future of lawyering that differs fundamentally from the one we (think we) know today. As with his 2010 piece for the *Law Review*, *The Death of Big Law*, Ribstein envisions a world with fewer lawyers who, in turn, do less lawyering, except in especially complex or contentious projects.⁵⁷

Here, Professor Ribstein argues that advances in information technology will empower computers to displace lawyers, generally. As this occurs, law-trained employees (LTEs)—especially those in-house—will increasingly find themselves looking for (and doing) non-legal work; conversely, to the extent humans interact with the machines, those humans may not be lawyers, but instead trained in business, engineering, systems analysis, and so on.⁵⁸

“This initially expanded in-house counsel’s power as the corporation’s main connection with the multifaceted market for legal services and technology,” Professor Ribstein notes.⁵⁹ But just as technology helped in-house counsel take power from outside lawyers, it is promoting corporate lawyers’ evolution. Many compliance and transactional tasks that expanded inside lawyers’ jobs are being

56. Larry E. Ribstein, *Delayering the Corporation*, 2012 Wis. L. Rev. 305.

57. *Id.*; Ribstein, *supra* note 1.

58. Ribstein, *supra* note 56, at 307 (“This Article focuses on a particular aspect of the evolving role of in-house counsel—the emerging technology of corporate legal services and its move from individualized legal advice to legal information products which do not necessarily involve the participation of conventional lawyers.”).

59. *Id.*

replaced by new technologies. By reducing the role of specialized legal expertise, technology could help transform legally trained employees from lawyers to business people.⁶⁰

Among other things, Professor Ribstein observes, this may reduce the likelihood that a company receives “independent” advice from an “emissary from the legal system,” who in effect serves two masters: the employer/client and the legal system itself.⁶¹ Law-trained employees (and those who are not) will become increasingly “embedded” in the company and perhaps focused less on law as such, and more on the business of the company.⁶²

Many might find disturbing this prospect of a world in which non-lawyers capture lawyers’ work or, in Daniel Plainview’s immortal words someone (or something) is drinking lawyers’ milkshake without them ever realizing it.⁶³ Not Ribstein. In typically sharp and provocative fashion he identifies a number of underappreciated potential benefits of a world with (fewer) lawyers, even those who may be “embedded” in the company. For example, he argues that this might reduce regulatory overhang in needlessly costly “excess” compliance efforts that lawyers might advocate.⁶⁴ Moreover, those performing the legal work may be taken more seriously by their business colleagues because “embedding implies a fundamentally more intimate connection to the company.”⁶⁵

B. Getting Comfortable

As one would expect, Ribstein’s analysis depends on certain assumptions about likely human behavior. As he has done in many

60. *Id.*

61. *Id.* at 306.

62. *Id.* at 330 (“As software takes over the mechanical tasks lawyers once did and leaves them free to focus on business strategy, other law-trained people will evolve from mechanics to architects.”).

63. *Memorable Quotes for There Will Be Blood*, IMDB, <http://www.imdb.com/title/tt0469494/quotes> (last visited Feb. 15, 2012) (“Here, if you have a milkshake, and I have a milkshake, and I have a straw. There it is, that’s a straw, you see? You watching?. [sic] And my straw reaches acroooooooss the room, and starts to drink your milkshake.. I.. drink.. your.. milkshake!”).

64. Ribstein, *supra* note 56, at 326 (“They would, accordingly, encourage corporations to engage in compliance only up to the point where expected benefits exceed expected costs and not to engage in extra compliance beyond this point for the sake of good corporate citizenship.”).

65. *Id.* at 327 (“[A]dvice by legally trained people who think like business people may be accorded more weight in corporate decision-making than conventional ‘legal’ advice. And these employees may be able to construct better compliance systems than lawyers who have an interest in firms’ violating the law and needing costly legal advice.”).

other contexts, Professor Donald Langevoort imports insights from cognitive science to provide a richer and more nuanced picture of the behavior of in-house counsel in the period leading up to and during the credit crisis.

Langevoort reminds us that crises or scandals are often punctuated by a persistent question: “Where were the lawyers?”⁶⁶ It is not difficult to imagine that in the case of the credit crisis, lawyers were either incompetent or perhaps even corrupted.⁶⁷ Langevoort sees another possible explanation: a failure of “contemporaneous appreciation and awareness.”⁶⁸ According to Professor Langevoort, in-house lawyers may have become too comfortable with their clients and transactions, “cognitive[ly] co-dependent” on their clients, and thus incapable of objectively appreciating the risks that were being taken.⁶⁹ This follows from the various forms of motivated thinking most likely to be rewarded in large, complex corporate environments:

we admire those who display intensity, passion, and commitment. The key point, on which I have elaborated at length elsewhere, is that this is a risky inference, and the cause of many judgmental mistakes. Intensity, passion, and commitment are associated with unrealistic situational construals, especially as they relate to risk. They suggest the presence of overconfidence, which is a positive trait in the corporate promotion tournament—and in greasing the corporate culture—but, once again, can be very dangerous when factored too readily into a compliance assessment. What lawyers and other gatekeepers need to learn, I argue, is how to see these appealingly benign traits as potential risk markers rather than reasons to defer.⁷⁰

Langevoort cannot solve the problems presented by these psychological phenomena. He does, however, offer a research agenda that should be intriguing and helpful to anyone wishing to develop a more robust appreciation for the causes of behavior by lawyers that seems questionable or difficult to explain. Perhaps the most interesting of these involves deeper paradoxes built into the incentive structures in which in-house counsel work. “[W]hat,” he asks,

66. Donald C. Langevoort, *Getting (Too) Comfortable: In-house Lawyers, Enterprise Risk, and the Financial Crisis*, 2012 WIS. L. REV. 493.

67. *Id.*

68. *Id.* at 496.

69. *Id.* at 497.

70. *Id.* at 508.

is the career progression by which someone becomes a CLO (or part of the senior legal team), and are there particular traits associated with making it to the top? Though discouraging to contemplate, it is quite possible that an adaptive survival instinct is the ability to get comfortable with risky courses of action—not to be so much of a worrier, even if worry is what the situation deserves.⁷¹

C. Early-stage Companies Are Often Run by Early-stage People

Not all in-house counsel work in large, complex companies. Thus, Professor Darian Ibrahim's contribution, on the empirics of in-house counsel at start-ups, presents a unique snapshot of the ways that comparatively small consumers of legal services decide whether, and how, to deal with the in-house counsel function.⁷²

Professor Ibrahim surveyed executives at 1,678 start-ups (defined as those having taken in at least \$5 million in venture financing between 2006 and 2008 as reported in the VentureX database).⁷³ Given their capital constraints, most startups that responded (72%) indicated that they did not have in-house counsel.⁷⁴ Those who did have in-house counsel mostly (63% of respondents) indicated that their work was primarily transactional, not litigation.⁷⁵

This is interesting because it tends to support the surmise that transactional work that is not especially complex or difficult will move from large firms to companies. Consistent with a view that lawyers will increasingly "embed" in their clients' businesses, Professor Ibrahim's respondents who did have in-house counsel overwhelmingly (93.8%) indicated that they did so because working in house enhanced attorneys' understanding of the business which, in turn, created its own efficiencies.⁷⁶

Professor Ibrahim also explores a third path that start-ups might take: the use of so-called "rent-a-GCs," a "hybrid" option that constitutes an outside law firm composed of mostly former in-house counsel.⁷⁷ Firms such as Outside GC⁷⁸ recognize that startups will have

71. *Id.* at 516.

72. Darian M. Ibrahim, *How Do Start-ups Obtain Their Legal Services?* 2012 WIS. L. REV. 333.

73. *Id.* at 343.

74. *Id.* at 345. Of those who indicated they did not have in-house counsel, 83% said the primary reason was that such a position was not cost-justified. *Id.* at 346.

75. *Id.* at 345.

76. *Id.* at 349.

77. *Id.* at 351–52.

78. OUTSIDE GC, <http://www.outsidegc.com/> (last visited Feb. 15, 2012).

legal needs that in-house counsel may well effectively fulfill, but lack the budgets to employ them full-time. Having access to attorneys with in-house experience on a usage basis provides efficiencies for the clients and diversity for the attorneys doing the work. The need for this access, however, can be critical, as start-ups often have legal problems every bit as serious as larger companies, if not more so. As Bill Stone, founder of Outside GC and a panelist at the Symposium observed wryly: “early-stage companies are often run by early-stage people.”⁷⁹ Having access to the experience of GCs on a metered basis may be an important innovation that solves a variety of problems confronting start-ups.

D. Going Global

At perhaps the other end of the economic spectrum from start-ups will be multinational firms, especially those based overseas, with a growing appetite for legal services and a variety of menu options from which to choose. This is the table Professor David Wilkins sets for us in his fascinating paper on the work of “GLEE,” the project on globalization, lawyers, and emerging economies.⁸⁰ GLEE is, according to Professor Wilkins, “a multinational and multidisciplinary empirical research initiative that seeks to understand how globalization is transforming the market for corporate legal services in important emerging economies, and how this transformation is in turn reshaping other key sectors of the legal service industry in these countries, and the global market for legal services generally.”⁸¹

The question is profoundly important because we frequently assume that the U.S. model of legal services—“Cravathism” in the case of full-service private firms, or the developing model of in-house counsel—is the preferred model for adaptation elsewhere.⁸² Thus, just as U.K. firms share many features with large U.S. firms, we might

79. Bill Stone, Statement at the University of Wisconsin Law School Symposium: Who’s in the House? The Changing Nature and Role of In-house and General Counsel (Nov. 18, 2011).

80. David B. Wilkins, *Is the In-House Counsel Movement Going Global?* 2012 WIS. L. REV. 251. Information on GLEE can be found at *Globalization, Lawyers and Emerging Economies*, HARV. L. SCH., <http://www.law.harvard.edu/programs/plp/pages/glee.php> (last visited Mar. 1, 2012).

81. Wilkins, *supra* note 80, at 264 (“During the preceding two decades, a good deal of the U.S. model of law firm organization and practice—dubbed ‘Cravathism’ for its emphasis on large, full-service law firms filled with entrepreneurial lawyers closely tied to business interests—crossed the Atlantic as well.”).

82. *Id.* at 256–57.

expect the growing legal markets of Brazil, India, and China to do the same. Drawing on a template developed by Kathryn Hendley's study of in-house counsel in Russia,⁸³ Wilkins and his team observe that, while the in-house counsel movement is, indeed, "going global," local pressures, practices, and norms will challenge some of the fundamental goals of the in-house counsel movement, and indeed of traditional ideals of lawyer professionalism generally.⁸⁴

E. Foreign Corrupt Practices Act

Perhaps one of the more acute problems created by globalization for in-house counsel involves compliance with the U.S. Foreign Corrupt Practices Act (FCPA).⁸⁵ Among other things, the FCPA criminalizes bribes by U.S. firms of foreign officials. Because payments that may be construed as bribes can be an important part of doing business in many foreign economies—especially growing economies such as China and India—the problem for in-house counsel of multinational firms is clear: As Daniel Chow observes in his contribution to the Symposium, the FCPA's proscription on bribery "could capture a multitude of transactions that occur on a daily basis in China."⁸⁶

The problem of FCPA compliance is, of course, common for all multinational firms with a presence in the United States. But, as Joseph Yockey points out, FCPA enforcement actions often result in settlements. By implication, settlements often require firms to sacrifice ostensibly non-compliant employees or agents.⁸⁷ Such decisions necessarily create problems of internal division and risk aversion, problems that will often (perhaps inevitably) land on the desk of in-house counsel. Even as they may increasingly be "embedded" in the company, regulatory schemes such as the FCPA will in many cases pit lawyers against clients, who happen to be their co-workers. This is an important tension in any system under the rule of law.

83. See Kathryn Hendley, *The Role of In-House Counsel in Post-Soviet Russia in the Wake of Privatization*, 17 INT. J. LEGAL PROF. 5 (2010).

84. Wilkins, *supra* note 80, at 256.

85. See 15 U.S.C. §§ 78b, 78dd-1 to -3 (2006).

86. Daniel Chow, *China under the Foreign Corrupt Practices Act*, 2012 WIS. L. REV. 623, 625.

87. Joseph W. Yockey, *FCPA Settlement, Risk-Aversion, and Internal Strife*, 2012 WIS. L. REV. 687, 689.

CONCLUSION

This Foreword has provided only a brief sketch of the changing nature and role of in-house counsel, as well as thinking about these changes from some of the nation's leading observers of the legal profession. Further reading in this issue will provide insight into other, equally important questions such as the real work-life balance trade-offs of working in-house,⁸⁸ fascinating transformations in the regulation of in-house (and other) lawyers in China,⁸⁹ and important insights about the role that in-house counsel did (or did not) play in the credit crisis, among other recent scandals.⁹⁰

We hope you enjoy this Symposium issue of the *Wisconsin Law Review* and find it as thought provoking to read as we did to organize.

88. Eli Wald, *In-house Diversity and Discrimination*, 2012 WIS. L. REV. 407.

89. Sida Liu, *Palace Wars over Professional Regulation: In-house Counsel in Chinese State-owned Enterprises*, 2012 WIS. L. REV. 547.

90. See Deborah A. DeMott, *The Stages of Scandal and the Roles of General Counsel*, 2012 WIS. L. REV. 461; Shaun Barnes, Kathleen G. Cully & Steven L. Schwarcz, *In-house Counsel's Role in the Structure of Mortgage-backed Securities*, 2012 WIS. L. REV. 519.