Avoid Being GM'ed:
Keeping Your Head In A Post-GM World

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Being GM'd:
Wrongs | Rights | Internal Lawyers

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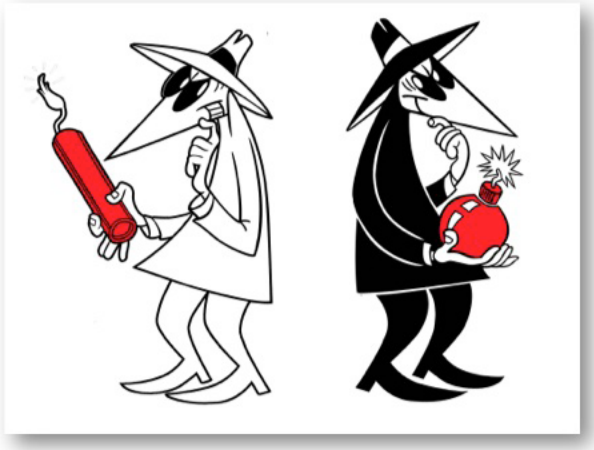
General malaise?

Client?



A v. B

Saul Goodman and You

It’s Okay To Smell A Rat

KBR | DC Circuit | Smelling Rats

The Jury's View

The Client View

Wisdom of Saul

How To Avoid Being GM'ed: The Wrongs and Rights of Clients and Lawyers

The GM internal-investigation report about ignition-switch problems raises a host of issues, one of which is its unusually sharp criticism of GM internal lawyers. Criticism of lawyers is nothing new, of course. Lawyer-jokes always blame lawyers; lawyers' spouses frequently blame lawyers; clients sometimes blame lawyers.

But public reports drafted by lawyers infrequently blame lawyers, so this one merits attention, most especially by internal lawyers in large organizations; by the outside counsel who serve them; and by the businesspeople who are the true clients.

What are the key takeaways?

The Normal, Uneasy. Skim the report. (Just skim it — it's too long to read cover to cover without heroin. If you have heroin, you have other issues besides ignition recalls and attorney ethics). On a practical, professional level, what's your reaction?

One reaction is, Not much. It is remarkable how normal the actions of GM's outside counsel and internal lawyers seem, and how characteristic of the operation of large organizations that are at once diffuse, sprawling and "siloed" (to use the term du jour). Anybody who works in or serves a large organization will recognize the course of events, the mis-allocation (or absence) of resources, the personal dynamics and the outcomes described the GM report. Despite expressions of editorial shock and Congressional indignation, the lawyer-narrative laid out in the GM report is, in many important ways, more normal than aberrant.

The Uneasy Normal, Uneasier. Prepare for a change in the public perception — and, perhaps, in regulation — of commonplace concepts of attorney-client privilege and the general confidentiality of lawyers' work. Prepare also for a coordinate change in internal-lawyers' reporting obligations within the corporation. Perceptions of lawyers are mixed, and we should generalize with caution, but jury consultants regularly note the suspicion and distrust with which lawyers are viewed – especially lawyers for big companies. Elsewhere, we have explained how laypeople see corporate counsel as mob lawyers.

Summertime, and the Congressional Livin' Is Easy. Congress is composed of laypersons who are political animals and who are no great respecters of privilege and confidentiality. As a former oversight-and-investigations lawyer for a House committee, I can testify: summer is the high season for O&I hearings. Nothing is going on legislatively, O&I hearings don't require lobbyists or constituents, it is hot as hell but most House and Senate hearing rooms have good air-

conditioning these days and, if you get some hearings under your belt in June and July, you'll have plenty as a Member to talk about in your district or state.

It is by no means inconceivable that bills will be introduced seeking to impose, in GM-like situations, a Sarbanes-Oxley style "reporting" requirement on internal lawyers (or outside counsel, or both), coupled with a "private attorney general" concept and whistleblower bounties. As in the SOX, internal-investigation world, if the matter is sufficiently serious, you may need two law firms: one firm that does an investigation and prepares a report that we all know will end up in the hands of the Government, and one firm that provides advice to the company (or the board, or a committee of the board) and over whose work we hope to maintain privilege. We have addressed internal investigations and related problems before.

[Full disclosure moment: My law firm does a lot of products-liability work, all of it on the defense side (that is, on behalf of the people who make the products that allegedly cause the complained-of injury). We are not involved in the matters described in the report, but we have in the past represented and continue today to represent automotive manufacturers. I do little products work; the primary way I judge a car is by its air-conditioning. Nevertheless, consider my biases as you read].

A change in the way we view lawyers and their roles. We may be faced with an evolving re-definition of that law school chestnut: Who is the client? Is the client now the Government? This is a critical threshold question. In the narrative laid out in the GM report, the "client" of the internal lawyers and of the outside counsel is not the government, or a government agency or a regulator. The client is not the buyer of a GM car or the passenger in a GM car. The client is not a Member of Congress, an editorial writer or a blogger. The lawyer — at least while she or he is acting as counsel — owes a duty only to the client, a client which, in this situation, is a non-natural person called a "corporation."

Professor Peter Henning is generally right on the money with regard to white-collar matters, but he jumps the gun when he so quickly blames lawyers in this kind of situation:

In the aftermath of the savings and loan scandal, Judge Stanley Sporkin asked how a once-prominent financial institution could engage in a pattern of misconduct. "Where were the professionals when these clearly improper transactions were being consummated?" he asked.

For General Motors, the negligence and incompetence that resulted in at least 13 deaths and multiple injuries from a faulty ignition switch is equally troubling. Numerous lawyers were on the scene, but none took responsibility for making sure their client did not continue to keep defective cars on the road.

Most people, when they pay for a lawyer, want that lawyer to be their lawyer and not someone else's. Indeed, that concept of loyalty is a foundation of the conflict-of-interest rules (rules, by the way, far more demanding than what is considered normal in the marketplace). Under current law and rules, and with few exceptions, lawyers internal and external have neither a duty nor a warrant to serve multiple masters simultaneously. The most relevant provision is Rule 1.13 ("Organization As Client") of the ABA Model Rules of Professional Conduct, which are restrictive about what a lawyer representing an organization may and may not reveal.

Even the "reporting up" obligations, which are limited, are focused on the client:

If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

This question is distinct, of course, from what is wise, merciful or sane from a business or spiritual standpoint, and one could make an argument that losing track of the ignition problem was "likely to result in substantial injury to the organization." But if the question is, Where were the lawyers?, the answer is, They were right there.

A Forest-and-Trees Cliche. In future litigation, if

wholesale problems still get lost in the retail landscape, they will imperil your job. If the GM report is accurate, there was never a genuine "visibility" problem about the ignition switch. "Visibility" was not the problem. "Irritability" was the problem. Lawyers tend to deal with the irritant at hand; they put out the fire first that is closest and hottest. They are trained to do so — first in law school, by "spotting issues" instead of looking at a scenario as a whole, and then in private practice, with the demarcation of work into mostly fenced-off fields (called "cases") and of compensation into fractions of time (called "tenths of an hour"). In addition, for internal lawyers, a combination of too many demands, insufficient resources and a corporate focus on the monthly or the quarterly has the same grinding effect. An in-house friend, a accomplished lawyer at a large corporation with a good reputation, says that her only criticism of her job is that she never — ever — has time to actually think.

So what, as a practical matter, can we do — internal lawyers, outside counsel and businesspeople?

Grow Real Ethics. There is no substitute for actual ethics, opposed to consultant-thick compliance programs and ever-muddied regulation. We have written on the compliance versus ethics problem before.

Senior Citizens Unite. Older lawyers – internally and externally — have to speak up. Young lawyers lack professional and financial traction, as noted in at least one instance in the GM report.

Be A Spook. When faced with "serial" litigation, try the CIA Team B approach of pitting two teams — one internal, one external – against each other on the same topic or issue. (Outside law firms are useful for this exercise, if there is money in the budget). As a way of addressing the Soviet strategic threat, Team B has had many critics, but alternative, competitive thought is always worth considering (and is always more expensive).

Misery Loves Company. Outside lawyers are proficient at CYA. Consider ways to put your outside law firms more firmly on the ethical hook.

Without the right budget and the right approach, none of this may matter, but give it some thought. By itself, the fact that we all believe that we are serving our clients won't keep us from getting "GM'ed."

Privilege, Corporate Silence and Saul Goodman

We are past Labor Day, and just as well. Marked by the GM internal-investigation report's criticism of some of the company's internal lawyers, the summer was not kind to internal lawyers generally and to the attorney-client privilege particularly. Consider, for example, the FCPA Blog's note on how life is tough for internal counsel.

Even more notably, there is apparently a federal criminal investigation of GM that includes the conduct of the lawyers:

Prosecutors could try to charge current and former GM lawyers and others with mail and wire fraud, the same charges Toyota faced, said a former official who worked on the Toyota case. But, they would need to have clear proof that the employees knew the cars were faulty and then deliberately withheld that, the former official said.

The investigation could be hindered by attorney-client privilege, according to legal experts, but that privilege can be waived by GM or pierced by a "crime-fraud" exception that allows disclosure of information intended to commit or cover up a crime or fraud.

The notion of privilege has taken a beating in recent weeks, as shown in a New York Times "Dealbook" article (Keeping Corporate Lawyers Silent Can Shelter Wrongdoing) by Steven Davidoff Solomon, a professor of law at the University of California, Berkeley:

[U]nless a whistle-blower steps forward, the [attorney-client privilege] principle remains strong. Despite the widespread involvement of its legal staff, General Motors successfully invoked the privilege to help keep silent on the ignition scandal it eventually faced. Even the Justice Department changed its guidelines in 2008 to remove a provision that penalized companies for invoking the privilege.

The result is that companies have a great incentive to shift anything hinting at legal trouble to their in-house counsel to ensure that it is protected from disclosure. The in-house legal department thus becomes the "cover-up and damage control" arm of the company.

Is it time to cut back privilege or even end it to prevent companies from hiding corporate crimes?

And, here's further commentary from Lucian E. Dervan at the White Collar Crime Prof blog, focusing on the Delaware Supreme Court opinion in Wal-Mart Stores, Inc. v. Indiana Electrical Workers Pension Trust Fund IBEW,Del. Supr., No. 614, 2013 (July 23, 2014): Privilege, Corporate Wrongdoing, and the Wal-Mart FCPA Investigation.

It's enough to make a law-abiding internal lawyer (and even the supporting-cast outside counsel) feel like Walter White's lawyer, Saul Goodman, in Breaking Bad:

What's to be done? Here are my thoughts:

We have written on GM and the privilege before: How To Avoid Being GM'ed: The Wrongs and Rights of Clients and Lawyers. In particular:

It is by no means inconceivable that bills will be introduced seeking to impose, in GM-like situations, a Sarbanes-Oxley style "reporting" requirement on internal lawyers (or outside counsel, or both), coupled with a "private attorney general" concept and whistleblower bounties. As in the SOX, internal-investigation world, if the matter is sufficiently serious, you may need two law firms: one firm that does an investigation and prepares a report that we all know will end up in the hands of the Government, and one firm that provides advice to the company (or the board, or a committee of the board) and over whose work we hope to maintain privilege. We have addressed internal investigations and related problems before.

Indeed, it is instructive to compare the anti-privilege sentiment in its most pitchfork version with the recent decision of the D.C. Circuit in the KBR matter, which was a resounding reaffirmation of privilege in the internal-investigation context. As we pointed out in It's Okay To Smell A Rat: Internal Investigations, Attorney-Client Privilege and the KBR Decision:

It is noteworthy that the D.C. Circuit clarifies the rule such that it applies in all contexts: civil, criminal and administrative. The attorney-client privilege is, to some degree, in derogation of the search for the truth, at least in the first instance. Yet, lawyers learn things from clients that the lawyers then do not have to reveal because we believe that, on balance, "truth" is ultimately best served in an adversarial system by a tool that encourages clients to tell their lawyers the truth.

This is an often overlooked point. Frequently, clients do not tell lawyers the whole truth, at least the first time a discussion arises. This is particularly the case in criminal representations, but it is not uncommon in the civil arena. Sometimes, this reticence arises from a client's knowledge of his, her or its wrongdoing, and a concomitant desire to hide or destroy evidence.

More often, however, that initial reticence arises from much more innocuous sources: embarrassment, shame, misunderstanding, fear of losing a job or worry about how superiors or colleagues might react. In those contexts, it is the privilege itself that is most solicitous of the truth, and allows the truth to eventually out.

In fact, if you do smell a rat, sometimes there is all the greater need to speak in confidence:

The attorney-client privilege has engendered debate ever since its first articulation, and that debate is healthy. We should not let the urgency of news items, however, obscure the broader good that the privilege can serve. There are many things that, in our adversarial system, the Government does not get to know about my clients. We could change the system to a more inquisitorial structure, but such a move goes against a host of cultural and constitutional mindsets that, however imperfectly, have preserved individual liberties, property rights and the rule of law for a long time. There are few professional prospects more pleasant for a prosecutor or a regulator than an opportunity to strip you of the ability to speak in confidence to your lawyer.

It's Okay To Smell A Rat: Internal Investigations, Attorney-Client Privilege and the KBR Decision

Post-recession, we are living through an era of regulators' grimaces and prosecutors' giddiness. Editorialists and bloggers want business scalps, especially scalps of individuals (as opposed to simple monetary fines for corporations), and most especially scalps of those in banking and finance. In the wake of the GM report and other stories about lawyers, the role of business lawyers is as suspect in the public mind as it has been for decades. It's as though everybody smells a rat.

On the other hand, faced with ever-increasing and increasingly complex regulation, companies' need to conduct self-reviews and internal investigations is unavoidable. Indeed, in many industries, the governing set of rules require companies to self-investigate and, under certain conditions, reveal those investigatory results to the Government. This is especially the case if the company wishes to be seen as a good citizen and a cooperator. (We have discussed the ups and downs of cooperation here and here).

In this environment, it was refreshing to see the decision of the United States Court of Appeals for the District of Columbia Circuit in In re Kellogg Brown & Root, Inc. In KBR, the D.C. Circuit considered a district court's denial of the protection of the attorney-client privilege to a company that conducted an internal investigation. The district court based its decision in part on the ground that the internal investigation had been "undertaken pursuant to regulatory law and corporate policy rather than for the purpose of obtaining legal advice," attempting to distinguish the ur-case in this area, Upjohn Co. v. United States, 449 U.S. 383 (1981)

Business people (and internal business-lawyers) wear many hats. Some of the hats don't fit neatly (or comfortably). Many activities undertaken by corporations have multiple purposes: business, political, legal and otherwise. If this view of internal-investigations law had been allowed to stand, it would be virtually impossible for a company subject to even the most rudimentary level of regulatory oversight to maintain its attorney-client privilege.

It is worth quoting the D.C. Circuit here at some length, given the clarity and forcefulness of the holding:

KBR's assertion of the privilege in this case is materially indistinguishable from Upjohn's assertion of the privilege in that case. As in Upjohn, KBR initiated an internal investigation to gather facts and ensure compliance with the law after being informed of potential misconduct. And as in Upjohn, KBR's investigation was conducted under the auspices of KBR's in-house legal department, acting in its legal capacity. The same considerations that led the Court in Upjohn to uphold the corporation's privilege claims apply here.

The District Court in this case initially distinguished Upjohn on a variety of grounds. But none of those purported distinctions takes this case out from under Upjohn's umbrella.

First, the District Court stated that in Upjohn the internal investigation began after in-house counsel conferred with outside counsel, whereas here the investigation was conducted in-house without consultation with outside lawyers. But Upjohn does not hold or imply that the involvement of outside counsel is a necessary predicate for the privilege to apply. On the contrary, the general rule, which this Court has adopted, is that a lawyer's status as in-house counsel "does not dilute the privilege." In re Sealed Case, 737 F.2d at 99. As the Restatement's commentary points out, "Inside legal counsel to a corporation or similar organization . . . is fully empowered to engage in privileged communications." 1 RESTATEMENT § 72, cmt. c, at 551.

Second, the District Court noted that in Upjohn the interviews were conducted by attorneys, whereas here many of the interviews in KBR's investigation were conducted by non-attorneys. But the investigation here was conducted at the direction of the attorneys in KBR's Law Department. And communications made by and to non-attorneys serving as agents of attorneys in internal investigations are routinely protected by the attorney-client privilege. See FTC v. TRW, Inc., 628 F.2d 207, 212 (D.C. Cir. 1980); see also 1 PAUL R. RICE, ATTORNEY-CLIENT PRIVILEGE IN THE UNITED STATES § 7:18, at 1230-31 (2013) ("If internal investigations are conducted by agents of the client at the behest of the attorney, they are protected by the attorney-client privilege to the same extent as they would be had they been conducted by the attorney who was consulted."). So that fact, too, is not a basis on which to distinguish Upjohn.

Third, the District Court pointed out that in Upjohn the interviewed employees were expressly informed that the purpose of the interview was to assist the company in obtaining legal advice, whereas here they were not. The District Court further stated that the confidentiality

agreements signed by KBR employees did not mention that the purpose of KBR's investigation was to obtain legal advice. Yet nothing in Upjohn requires a company to use magic words to its employees in order to gain the benefit of the privilege for an internal investigation. And in any event, here as in Upjohn employees knew that the company's legal department was conducting an investigation of a sensitive nature and that the information they disclosed would be protected. Cf. Upjohn, 449 U.S. at 387 (Upjohn's managers were "instructed to treat the investigation as 'highly confidential'"). KBR employees were also told not to discuss their interviews "without the specific advance authorization of KBR General Counsel." United States ex rel. Barko v. Halliburton Co., No. 05-cv-1276, 2014 WL 1016784, at *3 n.33 (D.D.C. Mar. 6, 2014).

In short, none of those three distinctions of Upjohn holds water as a basis for denying KBR's privilege claim.

More broadly and more importantly, the District Court also distinguished Upjohn on the ground that KBR's internal investigation was undertaken to comply with Department of Defense regulations that require defense contractors such as KBR to maintain compliance programs and conduct internal investigations into allegations of potential wrongdoing. The District Court therefore concluded that the purpose of KBR's internal investigation was to comply with those regulatory requirements rather than to obtain or provide legal advice. In our view, the District Court's analysis rested on a false dichotomy. So long as obtaining or providing legal advice was one of the significant purposes of the internal investigation, the attorney-client privilege applies, even if there were also other purposes for the investigation and even if the investigation was mandated by regulation rather than simply an exercise of company discretion.

In the context of an organization's internal investigation, if one of the significant purposes of the internal investigation was to obtain or provide legal advice, the privilege will apply. That is true regardless of whether an internal investigation was conducted pursuant to a company compliance program required by statute or regulation, or was otherwise conducted pursuant to company policy.

It is noteworthy that the D.C. Circuit clarifies the rule such that it applies in all contexts: civil, criminal and administrative. The attorney-client privilege is, to some degree, in derogation of the search for the truth, at least in the first instance. Yet, lawyers learn things from clients that the lawyers then do not have to reveal because we believe that, on balance, "truth" is ultimately best served in an adversarial system by a tool that encourages clients to tell their lawyers the truth.

This is an often overlooked point. Frequently, clients do not tell lawyers the whole truth, at least the first time a discussion arises. This is particularly the case in criminal representations, but it is not uncommon in the civil arena. Sometimes, this reticence arises from a client's knowledge of his, her or its wrongdoing, and a concomitant desire to hide or destroy evidence.
More often, however, that initial reticence arises from much more innocuous sources: embarrassment, shame, misunderstanding, fear of losing a job or worry about how superiors or colleagues might react. In those contexts, it is the privilege itself that is most solicitous of the truth, and allows the truth to eventually out.

Board Room, Bored Room and the Existential Horror of Styrofoam Coffee Cups: 13 Ways to Avoid Waiving Privilege in Corporate Meetings

This discussion by Mark Herrmann at Above The Law — Law Firm Meetings Vs. Corporate Meetings, Meetings, Meeting, And Meetings! — is a wonderful set-piece about meetings. Read the whole article, but here he compares law-firm meetings corporate meetings:

Corporations are different. They're publicly traded. They're often much larger than law firms. They're divided into operational divisions with pyramidal structures, with many people reporting to fewer people who report to fewer people still who report to someone near the top. Put that all together, and it means meetings. And meetings. And meetings. And meetings. In fact, to my eye, there are four types of corporate meetings . . . .

First, there are meetings that are necessary to move the ball. These are the types of meetings that you experience at law firms: Several people are undertaking different tasks. The tasks must be coordinated, and you need a unifying mind at the top to know what's happening. So you meet.

Or you're struggling with a tough issue that you can't resolve alone. You need help, so you meet.

Thus, the first type of meeting is one that's substantively necessary: You meet to move the ball.

But we set meetings at corporations for many other reasons, too.

Because of the frequency of internal corporate meetings, and the manner in which they are conducted, they are prime pathways to waive the company's privilege. How can we minimize the likelihood of doing so?

The modernist American poet Wallace Stevens (1879-1955) wrote Thirteen Ways of Looking at a Blackbird. You are an internal corporate lawyer. Think of this article as "Thirteen Ways Of Looking At An Outlook Invitation."

1. Judges and juries think you're a gangster. Realize that judges and juries, the ultimate consumers of lost privilege, think that internal counsel are some kind of consigliere — at best. You are perceived (wrongly, usually) as a businessperson worried about budgets or looking good for the boss or covering up problems, rather than as lawyer with independent judgment, ethical constraints and multiple clients rather. This is why, for example, agents and prosecutors do not especially like you, either, and may ask that you not attend employee interviews. The privilege caselaw about internal lawyers is often not great, either.

2. Pretend that you are Tom Hagen. In the movies The Godfather and The Godfather Part II, the consigliere to Don Vito Corleone (Marlon Brando), and later Don Michael Corleone (Al Pacino), is Tom Hagen (Robert Duvall). Fantasize that you actually are a consigliere, which has the two-fold benefit of (a) driving other people crazy and (b) preserving privilege. Follow steps (3) to (13) below.

3. Face-to-face. Among mob movies, The Godfather franchise still reigns supreme. In The Godfather, does anybody talk on the phone? Not if they can help it: somebody's always listening. You should assume the same. Face-to-face, outside, with a cement mixer in the background is best for avoiding audio surveillance. You've seen it in the movies. Face-to-face is best for preserving privilege, too: no forwarded emails or unintended texts to worry about. (f you want to unnerve others in the meeting, you can pay your drug-addled nephew, the one at the construction company, fifty dollars to drive a cement mixer back and forth outside).

4. Phone over email. If it's raining outside, or if cement mixers are too grimy, use the phone rather than email or text.

5. Maximize formality to maximize privilege. Here in the 21st century, business is supposedly informal, collaborative and horizontal rather than hierarchical. (Supposedly. Mainly, in many informal, collaborative and horizontal offices I see guys who would barely look good in suit-and-tie wearing clothes designed for junior-high volleyball coaches). Privilege, on the other hand, is formal: privilege law draws sharp distinctions based upon need-to-know; control groups versus the controlled; and circles within circles. If an activity actually helps the business, the product or the service, or is useful to and used by lots of people across the organization, it's probably not privileged.

6. If it was good enough for the Dead Sea scrolls, it's good enough for you. If there are to be agendas at the meeting, print them out on paper and then, after the meeting, collect them back up.

7. Put a bullet in bullet-lists. A PowerPoint presentation is already sufficiently soul-eating. (See Edward Tufte's work on this subject). Do not compound the problem by allowing meeting attendees to tote the presentation around: do not print out the PowerPoint slides and do not distribute them.

8. They no longer make carbon paper. Ban "cc's," an abbreviation for "carbon copy." (Remember mimeograph machines, though? Nothing made you think "second grade" more than the smell of mimeograph fluid). Some employees seem to think that the more they "cc," the more they communicate (or the more CYA they have). In general, the longer the "cc" list, the more likely that privilege will be lost, if indeed the email was privileged in the first place.

9. "Re" is a Latin prefix, not a meaningful communication. Do not re-use the same subject line in emails. Despite advances in technology, recycled "re" lines make pulling out the privileged thread more difficult and encourage thoughtless, too-rapid correspondence.

10. Crimson Security. If you must distribute documents with important factual and legal findings, print them on red paper. When scanned or photocopied, red paper turns black. You do not waive anything because no one can read anything.

11. Technological omerta. Look into "Silent Circle" or similar tools to minimize the permanence of emails.

12. Upjohn Massacres. Speak the language of Upjohn, frequently, meetings. It sobers people up. Seriously: people need to remember that the substance of the meeting is privileged and that the privilege is held by the company.

13. BYOD Is More Of A Menace to Privilege Than BYOB. Bug your IT people about making and enforcing a coherent policy on the phenomenon of “bring your own device” to work. (BYOD is not going away. Most employees would much rather bring their own device to work than bring their own children to work).

Good luck.

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“Draw your chair up close to the edge of the precipice and I’ll tell you a story.” — F. Scott Fitzgerald

The place where your business or your life meets the legal system is a cliff.

To not fall off the cliff requires two things.

Trust. And, someone to tell your story.

Trust between lawyer and client. And a narrative that persuades, whatever the audience—judge or jury, prosecutor or regulator, adversary or ally.

I base my practice first on trust, then on persuasion. Trust gets you to a comfort level; persuasion allows us to solve problems by shaping someone else’s thinking.

When should we talk?

Let’s talk when they try to put you in prison and your business out of business.

I have pretrial, trial and appellate experience across the federal and state landscape: corporate internal investigations, kickback cases, government-contract fraud, grand jury investigations, gaming issues, defense of criminal environmental offenses, public-corruption enforcement, due diligence issues under the Foreign Corrupt Practices Act, Congressional investigations, election contests, defense of health-care entities in civil and criminal matters, including Medicare fraud and qui tam lawsuits under the False Claims Act, and investigations by military officials.

I blog weekly on white-collar matters, White Collar Wire, and publish the firm’s Twitter feed about white-collar crime and enforcement matters, @WhiteCollarWire.

Practices Areas

- Environmental and Toxic Torts
- White Collar Criminal Defense and Corporate Investigations
- Electronic Discovery and Digital Information
- Plaintiff’s Litigation
- Securities and Shareholder Disputes
- Professional Liability Litigation
- Business Litigation
- Directors’ and Officers’ Liability
- Intellectual Property

Education

- B.A., Washington and Lee University, 1983
- M.F.A., Washington University, 1986
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