



44^e ASSEMBLEE GENERALE DE L'AFJE – 9 DECEMBRE 2013

“Independence of In-House Lawyers”

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President Delannoy, distinguished members of the General Assembly and guests, merci beaucoup! Thank you for hosting me here this evening. I cherish your hospitality and friendship.

It is an honor and a privilege to be here. As President of the American Bar Association, I appreciate your dedication to enhancing the role of corporate lawyers in France.

Professional independence is a hallmark of our profession. This is true no matter who our clients are.

In the U.S., we make no regulatory distinction between lawyers who have many, outside clients and lawyers who serve one client — their company as in-house counsel. We are all equally bound by our rules of professional conduct and our commitment to serving our clients with distinction.

When the issue of privilege comes up, this is especially important in terms of our ability to advise our clients in the best possible manner. The ABA has long argued that the attorney-client privilege for communications between in-house counsel and their clients should have the same scope and effect as the attorney-client privilege for communications between outside counsel and their clients. For many years, we have opposed policies that erode the privilege.

When it comes to privilege, distinctions between in-house and outside counsel have no merit. In-house counsel — like their clients — are and should be treated as first-class citizens. They should be given the same respect with regard to the privilege as they would receive if the counsel were employed by a law firm.

Concerns about abuses of attorney-client privilege in the corporate setting can and should be addressed through the traditional privilege doctrine, which distinguishes between legal and non-legal advice and prevents the privilege from applying where it should not.

Our position is rooted in the qualities that make corporate counsel so valuable — your ongoing relationships with management and your intimate understanding of your company's business needs.

In-house lawyers certainly appreciate the public policy reasons behind the attorney-client privilege — that the right to counsel can have real meaning only when clients are free to have full and frank communications with their lawyers.



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Without the privilege, clients are inhibited from sharing confidences with their lawyers — and they are subject to risky exposure if they do. Similarly, lawyers are discouraged from exploring options with and providing candid advice to their clients.

Limitations on communication hinder one of the most important roles of corporate counsel — averting legal problems in the first place. The in-house lawyer is in the best position to prevent problems before they occur by advising against imprudent, improper and illegal action.

The entire profession, therefore, has a significant stake in ensuring that society promotes and protects the attorney-client privilege.

The American Bar Association is the voice of America's legal profession, with nearly 400,000 volunteer members from all areas of practice, and it is deeply committed to this principle. We educate and advocate on the importance of the attorney-client privilege. We do this in addition to promoting other aspects of an independent profession, a fully functioning justice system and the just Rule of Law.

The ABA works best when it can work with groups like yours so we can mutually serve our members and make them better lawyers, promote the independent role of lawyers, and protect and enhance our systems of justice.

The ABA is a secure home for all lawyers — whether they are from the United States or are from beyond our shores. For corporate counsel, we have committees, programming, newsletters, publications, networking opportunities and many other activities in our Section of International Law, our Section of Business Law, and our Section of Litigation.

In-house counsel are also active in the ABA Section of Antitrust Law and our Section of Administrative Law and Regulatory Practice.

In our global society, the ABA gains its strength and fuels its sense of purpose from working with independent bar associations throughout the world, such as yours.

Although lawyers from throughout the United States and the world become members of the ABA to learn their craft more fully and to gain greater competence, we also know that our vocation is not just a job. Our profession is a key component of our democracy and a free society. We are officers of the court, and our justice systems are central to the challenges we face in our societies.

As lawyers who perform our craft with the utmost expertise and professionalism, we can work together to help our nations fulfill the promise of equal justice under law to all citizens.

The American Bar Association looks forward to working with you in this profound endeavor.

Again, thank you for the opportunity to be here and forge the international connections that we so value.

Au revoir!