

**KEYNOTE REMARKS OF**  
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WAYNE LAW REVIEW SYMPOSIUM – “CORPORATE COUNSEL AS  
GATEKEEPERS”

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***Note: The opinions expressed herein are the personal views of the author and do not reflect the views of PepsiCo, PepsiCo’s management team, or PepsiCo’s Board of Directors***

Thank you, Senator Levin, for that kind introduction and for your distinguished service in the Senate on behalf of the American people for 36 years.

Let me also thank Dean Benson and the Wayne Law Review for hosting us today, and a special expression of gratitude to my former teacher and long-time friend, Professor Peter Henning—we’ve known each other for more years than either of us will admit.

I am so pleased to join all of you today and be part of this conversation about corporate counsel as gatekeepers and the obligations and complications that can flow from that designation.

The last time I talked about the importance of gatekeepers in the corporate context, I was wearing a very different hat from the one I now wear. I was the Associate Attorney General of the United States, the third-ranking official at the U.S. Department of Justice, and I was prosecuting financial institutions whose reckless behavior had contributed to the worst financial crisis since the Great Depression.

Fast forward a few years and now I am here, the General Counsel of a Fortune 50 company that produces iconic, global brands, and I operate in a world where in-house lawyers are increasingly being viewed—both

within and outside of the corporation—as gatekeepers charged with deterring organizational misconduct, enhancing corporate integrity, and fostering an ethical culture as much as we are legal stewards of the enterprise and counselors to its management.

It is a world, as the organizers of this conference have observed, that is “fraught with danger, especially for in-house counsel representing a single client” —in-house counsel like yours truly.

And yet, I feel incredibly fortunate to have this particular job in this particular company at this particular time. PepsiCo is a vibrant company, a complex multinational operating in over 200 countries and territories around the world with about 260,000 employees and a market cap of over \$140 billion.

PepsiCo is such a large and consequential company and I often find that there is more similarity than difference between my role here and the last job I occupied: both offered a diversity of legal and public policy challenges with which I wrestle everyday; both are distinguished by an unrelenting yet exhilarating pace; both require my grappling with multifaceted questions which can rarely be answered with reference to the law alone; it’s a great job.

And it’s a great job in no small measure because of the support I and the entire legal function enjoy from the CEO, Indra Nooyi, my business colleagues, and the Board of Directors. They understand the contribution of the legal function to the value of business—both its short-term performance and long-term sustainability.

The role of the in-house lawyer as gatekeeper, of course, was not self-imposed. We carry that distinction through a combination of statutory obligation, unique position within the executive suite and our overriding fiduciary, and ethical obligation to the corporation and its shareholders.

And I remember when Sarbanes-Oxley was enacted in the wake of Enron and Worldcom. At the time, I was a law firm lawyer who had spent several years as a federal prosecutor, and I remember that there was a fair amount of consternation among lawyers about what imposing the role of gatekeeper on lawyers would mean for the attorney-client relationship, which as every first year law student knows is the most sacrosanct of professional relationships.

Many wondered: How would attorneys balance their obligation to be zealous advocates for their clients with a mandate to deter affirmatively organizational wrongdoing? How can I be both client counselor and corporate conduct cop? Wouldn’t that exclude corporate counsel from the very circles of trust needed to be able to detect and deter misconduct in the first place? Would the prospect of in-house counsel having to

cooperate with regulators necessarily cast a pall over the ability of corporate counsel to be trusted advisors to the business?

These were not unreasonable concerns at the time and they are concerns that persist still, as we've seen federal authorities focus increasingly on the conduct of corporate counsel, coupled with heightened expectations by federal prosecutors for companies to furnish information about individual wrongdoers in order to receive cooperation credit in criminal investigations.

But with public trust in so many institutions, including our corporate organizations and our corporate leaders, running at all-time lows; with the worst financial crisis since the Great Depression just beginning to fade in our collective rear view mirror; and with fresh corporate scandals engulfing brands consumers all over the world have come to love and trust—it seems unsurprising that the expectations and accountability placed on corporate counsel have only intensified.

And yet, I will tell you that I am comfortable with the concept of lawyer as gatekeeper, in part because it's what I expected of corporate counsel with whom I dealt when I was a Justice Department lawyer; in part because that's how I've often thought of myself.

At PepsiCo, my corporate home is in the C-suite, I live with management, and I am a trusted counselor to the CEO and my business management colleagues. I was hired by the Board of Directors, and I serve as its counsel. But my client is the corporation and the shareholders to whom I owe my ultimate duty.

I am their gatekeeper.

This basic concept—who the client is, and that the client is not the CEO or the business management team, but the corporation itself—this is something I emphasize repeatedly with the lawyers who comprise my team.

And it's important to keep this top of mind because in-house counsel constantly face the pressure of helping the business to be successful, just like our business colleagues do. Like them, we believe in the business model, in our right to win in the marketplace, and we want to develop our reputation as facilitators, as enablers that help our business colleagues make smart, strategic, value-creating business decisions.

I often tell my in-house lawyers at PepsiCo that it's not enough to be the technical lawyer who knows all the rules, but fails to provide the guidance and judgment necessary to help the business achieve its goals. We must be more than technicians. We must be counselors and partners.

So it's essential that we build trust with our business colleagues, because we're all in this boat together. And the best in-house counsel are able to build these relationships of trust with their business colleagues,

such that when difficult challenges come, the business seeks out the lawyer to help think those issues through.

So I highly encourage those relationships and model it in my own interactions with my business colleagues.

But I also tell my in-house lawyers this: You must be more than facilitators of business solutions. You must use the relationships you've built with your business colleagues and the access you've forged based on the trust you've created to protect your client, the corporation. You must know how to balance being a good business partner with safeguarding the enterprise.

And that sometimes means answering not just the question of "*can* we do this?" but going further to address the question of "*should* we do this?"

And that means there will undoubtedly be times in the in-house counsel's career where she will be faced with the uncomfortable prospect of saying no, or pushing back, or reporting up. These, too, are realities of the in-house counsel as gatekeeper, and if we aren't willing to sometimes occupy that uncomfortable ground, then we simply should not occupy this job.

Statutory and regulatory authorities require attorneys to report evidence of material violations or breaches of fiduciary duty to the chief legal counsel or the CEO, and various Justice Department and SEC mandates outline up-the-ladder reporting and whistleblower provisions. Together these authorities sketch out an enforcement regime that places a great deal of responsibility on internal compliance and oversight, and more often than not that sits in the wheelhouse of the general counsel.

And that is both a challenge and an opportunity. It's a challenge because we operate in an environment where the competition for limited corporate resources is intense, and the compliance training and monitoring of lay personnel—especially in a large, international and complex organization that operates across different national cultures—that can be expensive, time consuming, and extremely difficult under the best circumstances.

But it's also an opportunity because it is a chance to add value to the corporate enterprise. Because building an ethical culture can enhance the sustainability of the business by creating clear guidelines for employee behavior that create consistency and predictability, and that foster the internal trust necessary for high morale and productivity, as well as an atmosphere where doing business the right way becomes the only way to do business. Seizing the opportunity to build that kind of corporate culture also creates important deposits in the business' credibility

account, and that is critical when things go wrong, as they almost certainly will at some point.

And added to all of that is this reality: We live in a world where the barriers to information access and communicating across geographic borders is lower than at any previous time in human history, a time when the quietest voices can be amplified and heard in the most influential corridors of corporate power. There is increasingly a recognition that the citizens, NGO's, communities and consumers who grant companies their social license to operate—they are increasingly demanding strong values, ethical behavior, and robust compliance from corporations.

And those companies that can demonstrate they are operating from an ethical foundation—that it's part of their corporate DNA—I believe their social license will be renewed as they continue to build trust within the ecosystems in which they operate.

Those who cannot do this will be left behind. And this reality creates a competitive advantage that will reward ethical companies with long-term shareholder value.

That's the opportunity.

In my own organization, I try to seize that opportunity every day in both the tone I set and the organizational structure I reinforce. In addition to helping our lawyers keep who their true client is top of mind, and encouraging up-the-ladder reporting whenever they encounter an issue that causes them concern, my office also administers a robust compliance and ethics structure that encourages every PepsiCo employee to become an owner of our values-based culture.

Every year, we train every employee on PepsiCo's Code of Conduct, on what it means to do business the right way. Everyone—from the most junior of delivery personnel to the CEO—undergoes this annual training. And when people fall short of those expectations as laid out in our Code of Conduct, we encourage use of our Speak Up process, which enables anonymous reporting by anyone who believes there has been ethical or legal misconduct by fellow employees, management or suppliers with whom we regularly interact.

So all of this contributes to an internal expectation we foster that as in-house counsel, we must be gatekeepers.

It was Norman Redlich, the dean of NYU's Law School some forty years ago, who talked about how it was both the lawyer's burden and glory that we are expected to live by high, unimpeachable professional standards yet still earn a living at the same time.

It is a challenge, not to have the luxury of those who can live in the temple and condemn the marketplace, nor possess the single-minded imperative of those for whom the marketplace is their temple.

We have to live in both worlds, and be trusted in both. And as gatekeepers, that is our fate, as well as our privilege.

Thank you very much.