

## Enforcers Provide Guidance and Warnings for In-House Antitrust Lawyers at CLA Summit

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The California Lawyers Association's Antitrust and Unfair Competition Law hosted its inaugural In-House Counsel Summit on May 15, 2025, at the Computer History Museum in Menlo Park, California. The Summit consisted of two panels of federal and California state antitrust enforcers, who discussed antitrust enforcement considerations that they believed should be important for in-house counsel with antitrust compliance responsibilities.

The first panel featured Leslie Wulff, Chief of the San Francisco Office of the Department of Justice Antitrust Division, and Erik Herron, Acting Assistant Regional Director for the Western Competition Group of the Federal Trade Commission. The panel was moderated by Sean Meenan, Director of Legal at Lyft Inc. Wulff stressed the importance of early compliance when companies are contacted by an enforcement agency, both in terms of setting the tone of the investigation and for the sake of efficiency. Wulff called the need to preserve documents and communications after receiving a subpoena from the DOJ the "absolute most important thing." She emphasized that preservation efforts should include preservation of documents other than just traditional types, including text messages and instant messaging apps. Wulff and Herron discussed how high costs to document collection and production can be saved through informational interviews with investigators, in which companies can whittle down which key documents are required, potentially obviating the need for much larger productions.

Beyond document preservation and tips for initial contact with the government, Herron also cautioned against company policies advising employees how to communicate about antitrust topics internally, referring as an example to Google's "Communicate with Care" policy. Herron viewed a policy to include counsel on internal emails as a matter of course as concerning. Rather, Herron believes that such policies should be centered around compliance with antitrust laws, instead of focusing on communication methods.

The second panel featured Paula Blizzard, Senior Assistant Attorney General for Antitrust at the California Department of Justice, and Kathleen Foote, former Senior Assistant Attorney General for Antitrust at the California Attorney General's Office. There was no moderator; instead, Blizzard and Foote engaged in a lively discussion about each of their tenures in California state antitrust enforcement. The state enforcers commented on the history of enforcement in California and enforcement trends that are emerging. They also discussed the California Law Revision Commission's work towards revising California antitrust law and the status of those efforts. And like the federal enforcers, Blizzard also discussed the importance of document retention, noting in particular that enforcers expect companies to preserve more than just documents found on company servers. They also expect preservation

of text messages and data from other emerging messaging applications, such as Signal. Messages in applications like Signal typically disappear within a particular time frame, so Blizzard believes companies need to be careful that such documents are still preserved.

In sum, the state and federal enforcers messaged that antitrust enforcement remains a priority, that early and honest engagement with enforcers is important, and that enforcers will look carefully at document preservation efforts and any internal policies that they believe might go too far to control internal communications.

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