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Corporate Legal Times/Arthur Andersen & Co. Survey

Corporate Legal Budgets Up 18 Percent, But Entire Increase Goes to Law Firms

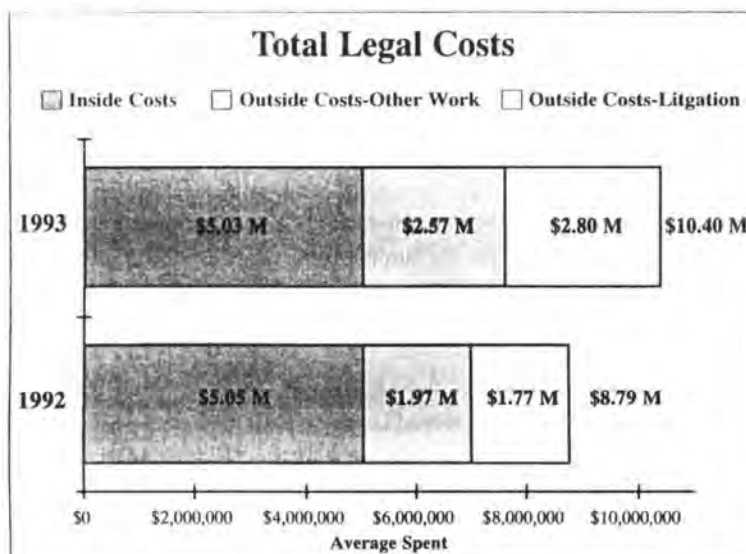
**Biggest Culprit:
Expensive Litigation**

BY DAVID RUBENSTEIN

ENFORCED FRUGALITY in the corporate legal department may be costing the company money. According to the Fifth Annual Corporate Legal Times/Arthur Andersen & Co. General Counsel Survey, most internal legal budgets are frozen, and few if any new attorneys are being hired. Meanwhile, the amount of legal work is going up, and with it the need for outside lawyers. As a result, total legal expenditures have risen sharply during the last reporting year.

The 1994 survey was mailed to 4,000 general counsel in companies ranging in size from less than \$100 million in sales to more than \$10 billion. Replies were received from 629 companies (a 15.7 percent return rate) whose total aggregate annual sales were more than \$900 billion. Their total legal budget was more than \$5.3 billion. Of that \$5.3 billion, almost \$2.8 billion was spent on outside lawyers and consultants.

The average reported legal department budget increased by a hefty 18 percent over the previous year. But general coun-



sel are having to allocate that increase to outside lawyers instead of using it to build the department. For most companies, virtually the entire increase in legal department budgets went outside.

Put another way, the percentage of total legal department costs going outside increased last year. That increase was dramatic. Two years ago outside costs were

42 percent of the total legal budget; for the most recent reporting year, they were up to 52 percent.

"What's actually going up, is the number of extraordinary cases you have to litigate," says Martin W. Spector, general counsel and executive vice president of Philadelphia-based ARA Services Inc., a

SURVEY continued on page 30

Best Management Thwarted by Change



Roundtable participants (standing from left): Stephen B. Paige, The NutraSweet Co.; William H. Farley Jr., Chicago Transit Authority; Gayle A. Altur, Chicago Title Insurance Co.; Dean W. Fischer, Arthur Andersen & Co.; William J. Bowe, Encyclopaedia Britannica; and Roy A. Wentz, Helene Curtis. Seated: R. Thomas Howell Jr., The Quaker Oats Co.; Richard H. Irving, Duchossois Industries; and Zan Hale, Corporate Legal Times.

More Employment Cases, International Expansion Account for Growing Budgets

CORPORATE LEGAL TIMES **ROUNDTABLE**

The Fifth Annual Corporate Legal Times/Arthur Andersen General Counsel Survey, which is highlighted in other areas of this issue, raises many significant issues about where corporate legal departments have been and where they're headed in the future. This roundtable brought together general counsel to probe those issues, to see where their companies fit against the national averages and to get their perspectives on the challenges they face. Roundtable begins on page 39.

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SAY CHEESE. With a new CEO on board, everyone at Eastman-Kodak is smiling - including general counsel Gary P. Van-Graafeiland.



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HOW GREEN ARE YOU? Sun Company Inc. has taken the lead in getting an independent stamp of approval on the company's health, environment and safety programs by commissioning Coopers & Lybrand for an independent review. **PAGE 9**

SUCKING SOUND STARTING? The U.S. Labor Department is beginning to receive complaints filed by Mexican workers from U.S. company-owned plants claiming unfair labor practices. **PAGE 11**

ALL HOOKED UP. Corporate legal departments, taking a lesson from their financial and operational co-workers, are leading the way in networking their personal computers. **PAGE 26**

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CORPORATE LEGAL TIMES ROUNDTABLE

Many Management Tools Offset by Growing Legal Needs

Dean W. Fischer, Arthur Andersen & Co. (co-moderator): This year, the General Counsel Survey had the highest response we've ever had. One of the issues confronting all of you, judging from the response, is cost growth or cost control. After reviewing some of the survey results, I asked the question, "What's wrong with this picture?"

On one hand, you have more internal cost accountability than ever: keeping track of time, cost tracking, customer charge backs, hiring of contract attorneys, modest growth in in-house staff and a continued high use of budgeting. You also have a high degree of external cost accountability: alternative fee structures with outside counsel in the form of discounts, fixed price arrangements, alternative billing arrangements and so on. There is more automation being bought to bear on the litigation processes. Yet still, the cost growth seems to be extraordinary — 18 percent on the average.

My question is, why? Is it because management techniques are not effective? Is the environment such that the legal budget will grow no matter what happens managerially?

William H. Farley Jr., Chicago Transit Authority: I think in part what is happening is a reflection of what they call the "litigious society" that we live in. More lawsuits are being filed. Plaintiff's attorneys are becoming more imaginative in the theories they espouse, and the exposure is greater for different kinds of lawsuits. You can have one lawsuit that blows your entire budget for outside counsel for the year. And in terms of the amount of reserves that the company may have, they blow the entire reserve on one lawsuit. Things like this are at the heart of the problem.

Fischer, Arthur Andersen: So you say "environment."

Richard H. Irving, Duchossois Industries: I would agree with that on the macro level. We happen to run counter to the trend in our budget for outside fees. It was actually down in the last couple of years. We have a few cases where we're the claimant in complex construction and government contract cases, which we look to as an investment. If you put those aside, our product liability defense budget is sizably down from previous years.

Roy A. "Pete" Wentz, Helene Curtis: I would like to agree with you in terms of particularly routine products liability cases, but there is an increased emphasis on things like employment-related cases. They are becoming much more significant now with ADA and other employment laws. Certain aspects for us have gone way up in terms of outside counsel.

William J. Bowe, Encyclopaedia Britannica: I certainly second that. One of the



PHOTO BY JOHN MCNULTY

"More important in terms of cost control is your familiarity with the case and the way you manage your relationship with outside counsel. It can become a pain to concentrate on the budgetary aspects of a case as opposed to the substance."

William H. Farley Jr., Chicago Transit Authority

growth in employment law cases. That's been a major stimulus to growth. About half of EB's activity is international, so as we look at a total legal cost picture, we are not driven entirely by the trends of the day that occur in the United States.

Gayle Altur, Chicago Title and Trust Co.: One big case can just wipe out your entire budget. But there is still what is referred to as the continuing law firm "legal billing monster." Sometimes you see two or three increases in the amount an associate assigned to a project bills. He would start out at \$100 an hour, and at the end he was at \$250 an hour, and that was in one year.

Zan Hale, Corporate Legal Times (co-moderator): The associate must have learned a lot in that year. Steve?

Stephen B. Paige, The NutraSweet Co.: The NutraSweet Co. may be bucking the trend over the last three years. Our law department budget has actually gone down in terms of cost to the company by approximately 40 percent. The reason for that may be a little bit different than other companies here. We came off our patent at the end of 1992 when there was a major emphasis in our company — the law department and every other department — to cut our costs and to be more efficient. As far as the litigation line of our budget, that stayed relatively stable. Perhaps it's increased slightly, and it's for the reasons that you mentioned. We had two or three major employment cases last year. We won, but the costs were quite high.

Hale, Corporate Legal Times: Even the winning cases are losers on your budget.

Paige, NutraSweet: There's a little bit of truth to that.

Co.: Quaker's costs over the last three to five years have pretty much stayed a constant percentage of sales, which means it crept up gradually.

Currently, the primary area of growth is overseas. We are taking some of our products aggressively to different parts of the world, and there are regulatory and business issues that involve lawyering up front. I concur with what others have said about litigation. To look at a one-year budget isn't a fair gauge because a lot of it is the luck of the draw. What matters is what you're involved in and what major events occurred that year. They typically stretch out over years, unfortunately.

Wentz, Helene Curtis: As we've expanded internationally, it has been a tremendous cost, particularly intellectual property and patents fees. Those costs have just been sky rocketing for us.

Fischer, Arthur Andersen: Are you able to manage the process better today than two, three or four years ago? One of the interesting things that comes out of the survey is that ADR was substantially down in 1993 versus 1992. Sixty percent of the respondents said they used it less last year than they did the year before. Is it not working? Is it just not catching on?

Paige, NutraSweet: We've had two experiences. First, we have tried in any number of matters to use ADR, but have found that the other side, for whatever reason, decided they were not interested in it. It takes two to dance. The second area that we are taking a look at is whether we could use ADR or some form of it as part of our employment dispute resolution process for internal employees to avoid cases going to court. We will have a recommendation for management by the end of the year.

the things I keep hearing, maybe ADR has an application in that sort of a setting.

Bowe, Encyclopaedia Britannica: In the last year, we had two ADR experiences. They generally worked well; that's a bit of a change for us. One was in the employment area and the other a contract dispute.

The push for ADR in the law journals and the rest of the popular legal press has not really been matched by the reality of it coming to the forefront as a trend. In cases where substantial discovery is involved, it isn't always appropriate. But there will be those cases in employment law where it is a desirable choice and we'll see it a lot more.

Altur, Chicago Title: ADR tends to work when you're in long-term relationships that you want to maintain. It also works in consumer contracts, in insurance areas and in many other areas. The most common reason for not using it is because outside law firms don't like it and almost always advise against it.

Hale, Corporate Legal Times: Whether the outside attorneys like it shouldn't really be a factor, should it? Aren't the general counsel as buyers of these services, in control?

Altur, Chicago Title: When companies think there's a lawsuit on the horizon, they often consult with their outside law firms. One in-house counsel told me that they don't want to put an ADR clause in their contracts because they feel they lose a lot of maneuverability.

ADR WORKS IN COMPLEX CASES

Farley, CTA: I think ADR definitely has a place. Its use will grow in the years to come. The key to it is having the right case and proposing the ADR resolution at the right time depending on the contractual realities of the situation. And it goes to the heart of what your philosophy as a general counsel is with regard to litigating the matter. Are you a win-lose person, or are you a get-out-of-this-business-as-soon-as-possible type of person? What is the philosophy of the attorney you're using? When those things click together, and assuming you don't have on the other side an attorney who is milking the case, then it can have a place.

We have found it extremely successful in situations where you have very complex litigation that will cost both sides significant amounts of money to litigate. Having an independent person from the outside come in to debunk some of the stereotypes both sides are holding helps you move closer together. That assumes everyone is operating in good faith.

Irving, Duchossois: I'd agree on the use of it in a complex commercial litigation situation. We found the cost of discovery and preparation of the matter for ADR isn't a whole lot less than regular litigation. The cost of the actual trial, such as it is, can be dramatically shortened or lessened with the use of ADR.



PHOTO BY JOHN McNULTY

"As far as the old-boy network, it is definitely gone. Many of the litigators who work for us are women, and so those days are gone."

**Stephen B. Paige,
The NutraSweet Co.**

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ROUNDTABLE

We have done it successfully a few times.

Hale, Corporate Legal Times: We always hear from the pro-ADR folks—maybe they just speak loudly—but the survey results did not bear out what the proponents are preaching. Why?

Farley, CTA: With ADR you give up a certain amount of control, and that always makes people uncomfortable. You don't know what the outcome will be. And I think that factor sometimes makes people shy away from ADR. It never hurts to get a fresh look. It only hurts the first time you

lose, because then you are stuck.

Howell, Quaker: Quaker has historically not used ADR much for the same reasons that have been articulated. We are taking a fresh look at it, however, for two reasons. One is cost and the other is that even the best-prepared cases have run into situations in various courts which are just unexplainable. Whereas we used to have a high degree of faith that justice would flow from traditional lawyering through the courts, we are less certain of that now. So ADR is a more viable alternative.

BUSINESS NEEDS DRIVE LEGAL NEEDS

Fischer, Arthur Andersen: Let me get your thoughts on a different issue—the use of outside counsel. Are you using more or fewer firms?

Howell, Quaker: In other purchasing areas of the company, there is a move toward consolidation. We call it partnering. It's building long-term, in-depth relationships. On one hand, we have more or less done that with some law firms with whom we have long-term relationships. We haven't been involved in any swing or radical consolidation. A big part of what we are doing as a company now is going into different parts of the world where we haven't been before. That involves new relationships with law firms in those places.

The other area where it's important to make a statement is with minority law firms. We've tried to look at new firms on a regular ongoing basis over the years and we've continued to do that. You have to strike a balance, and at least in our organization we haven't tried to move toward consolidating or expanding. We're trying to deal with the needs of the clients in the way we have traditionally.

Wentz, Helene Curtis: I am not sure we're that inconsistent with the rest of the company. Just as we would not choose one chemical supplier to supply all of our chemical needs, we don't choose one law firm to provide all of our legal needs. We've segmented our needs, and then have built relationships with firms that we've dealt with in the past to meet those needs. We've finally come around to where the business people are: finding the best supplier for each product.

Bowe, Encyclopaedia Britannica: We see it as a different trend in our shop in our choice of outside counsel. One thing that is moving our choice is the electronic publishing technology that is moving into the traditional print business. That has oriented EB toward software issues and patent issues that were traditionally never a part of our legal mix. We have had to go out and look for that particular expertise. We're finding it's very narrow. You don't find a lot of law firms with expertise in software patents, infringers on the Internet or putting out a CD-ROM. So that's been a peculiar factor for us.

Fischer, Arthur Andersen: It sounds like it's specialization-driven.

Bowe, Encyclopaedia Britannica: Very much so.



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"We are taking a fresh look at ADR for two reasons. One is cost and the other is that even the best-prepared cases have run into situations in various courts which are just unexplainable."

**R. Thomas Howell Jr.,
The Quaker Oats Co.**



PHOTO BY JOHN MENULTY

using TQM concepts with respect to how you manage the legal function internally? And if you are, what are the early returns? Does it work with respect to doing a better job measuring your customer wants and your customer needs, and how you are satisfying those customer needs?

Howell, Quaker: We've done some of it, but we're not doing it systematically and regularly. We've done some customer surveys at a couple of different levels and we've tried to open up communication and improve morale in the law department, along the lines of what other departments are doing. But a systematic adoption of a TQM template isn't something we've done. We thought about it, but decided that if it ain't broke, don't fix it.

Hale, Corporate Legal Times: Have any of you whose companies push TQM managed to keep it out of the legal department? TQM may be a buzzword that everybody is sick of. In the results, a very low number of people answered the TQM questions.

Farley, CTA: Part of it comes from the fact that the law department is more akin to a sports team than it is to something else. You either win or you lose. But everybody knows when it is a good win, everybody knows when it is not. You're not doing an analysis and graphing and charting the morale issues. We are working together. We have a common goal of being as efficient as possible.

BUDGETING WORTHWHILE

Hale, Corporate Legal Times: One area of the survey results that interested me was the budgeting questions. People reported they are not budgeting as many of the major matters or major litigation. It's down slightly. And then the next question was: Is your budgeting on target? Half the people said no.

Do you budget? Is it accurate? Or is it merely an exercise in paperwork?

Paige, NutraSweet: We definitely budget in our company, but in the litigation area there are matters not 100 percent within our control. Someone sues us, we have to defend it, and we will defend it very vigorously. We also have a very close relationship with our finance group and with our

about where we are and where we're going, and we make adjustments. We're fortunate in that regard. We're held pretty tight to what we can control, but we're given flexibility in areas we can't control.

Altur, Chicago Title: We have had discussions about budgeting, and the consensus seems to be that budgeting doesn't work within law departments which are primarily reactive. But in terms of prophylactic efforts, budgeting can work to the law department's advantage.

***Bowe, Encyclopaedia Britannica:* We found that it's an essential planning tool, but I don't think we've had much greater success than others when it comes to accuracy. We're small enough so that the vicissitudes of transaction life and litigation can push around the budget a good deal. But that in no way diminishes the value of the discipline of the process. Those parts that are controllable and that you can be held accountable for are essential to good management.**

***Hale, Corporate Legal Times:* By controllable you mean as far as your internal costs go?**

***Bowe, Encyclopaedia Britannica:* Yes.**

Hale, Corporate Legal Times: What about the CTA? Do you have a budget from City Hall?

Farley, CTA: We have some fairly strong feelings about budgeting. It's a mixed bag for me because in addition to being general counsel for CTA, I'm also a practicing litigator for Jenner & Block, so I see it from both sides. And my experience is that it is important to sit down with the people who will be handling the matter at the beginning of the case and get on a common ground with regard to what kind of staffing will be involved, what issues you want to be consulted on, what the person's overview of the whole case is. Generally speaking, I think a good litigator can tell you, after hearing the facts, about how many people and how much time it will take from month-to-month if it goes on a regular track. Beyond that, you get into the nickel and dime.

I think budgeting litigation has a place

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ROUNDTABLE PARTICIPANTS

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Gayle A. Altur is assistant vice president for national accounts and an attorney at Chicago Title Insurance Co. She is director and president

of the Chicago chapter of the American Corporate Counsel Association. She was formerly assistant vice president of national accounts for Commonwealth Land Title Insurance Co. in Chicago. Altur earned her J.D. from DePaul University College of Law, Chicago.



William J. Bowe is executive vice president, secretary and general counsel at Encyclopaedia Britannica of Chicago. The

company has \$500 million in sales and a legal staff of four. Previously, he established the in-house law department at United Press International, and had served in the Counterintelligence Analysis division of the Army operations center in the Pentagon. Bowe received his J.D. from the University of Chicago Law School.



William H. Farley Jr. is general attorney and general counsel of the Chicago Transit Authority and a partner at Jenner & Block,

Chicago, CTA, a \$1.2 billion corporation, has 29 attorneys in the legal department. He is the author of "Long Arm Jurisdiction - When is a Mere Phone Call Enough?" and "Architect and Engineer Liability: Claims Against Design Professionals." Farley graduated from Yale Law School.



R. Thomas Howell Jr. is vice president and general corporate counsel of The Quaker Oats Co. in Chicago, where he has served

as an in-house attorney since 1971. Quaker, a \$6 billion company, has 21 in-house attorneys. He is director and past president of the Chicago Bar Foundation and a director of the Food and Drug Law Institute. Howell earned his degree from the University of Wisconsin Law School and attended the Advanced Management Program at



Richard H. Irving is vice president and general counsel of Duchossois Industries in Elmhurst, Ill. Duchossois is a privately-held

\$1 billion company with five attorneys on its legal staff. Previously he was associate general counsel and secretary for Union Camp Corp. He also worked in the legal departments at Westinghouse and Rockwell International. Irving earned his LL.B. from Harvard Law School.



Stephen B. Paige is vice president, general counsel and secretary of The NutraSweet Co., a \$105 million company

based in Deerfield, Ill. There are nine lawyers in the legal department. He is also a member of the company's executive management committee and the Monsanto Management Council. Paige previously held the same position at Miles Inc. in Elkhart, Ind. He earned his J.D. at Georgetown University Law Center.



Roy A. Wentz is corporate vice president, secretary and general counsel at Helene Curtis in Chicago. There are four

attorneys in the legal department of this \$1.2 billion company. Wentz was formerly an attorney at Sidley & Austin, Chicago. He is president of the board of directors of Friends of the Chicago River. Wentz graduated from Northwestern University School of Law.

Dean W. Fischer is the partner in charge of the litigation services practice at the Chicago office of Arthur Andersen, overseeing 250 professionals who work in litigation services. He is a Certified Public Accountant. Fischer received his degree in accounting at Valparaiso University in Valparaiso, Ind.

Zan Hale is managing editor of *Corporate Legal Times*. She has 15 years of journalism experience with newspapers and magazines, and served as associate editor of *Ohio Law Magazine*. Hale joined *Corporate Legal Times* in January 1994. She received her B.A. in Journalism from Ohio Wes-

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ROUNDTABLE

terms of cost control, is your familiarity with the case and the way you manage your relationship with outside counsel. It can become a pain to concentrate on the budgetary aspects of a case as opposed to the substance.

Irving, Duchossois: I agree with Bill. The discipline of having to go through that is something lawyers don't do enough of. For a department's budget, a lot of that is probably necessary and good. In terms of individual transactions or cases, with a few exceptions, we found that it's better to have a rolling 90-day budget on a cash flow basis rather than some sort of front end next-two-years-budget-for-this-case basis. That helps the business people plan on the short term, which is what they really want.

It also adds a measure of control over the outside counsel because it forces them to state what they are doing for the 30 days, 60 days or 90 days. We also found that if you do it on every case, the payout probably is not worth the effort. But for the major cases, it helps somewhat to control where you're headed.

BILLING ARRANGEMENTS

Fischer, Arthur Andersen: Using that technique also recognizes the inherent unpredictability of litigation. How does budgeting relate to billing relationships with outside counsel? There has been an increase in fixed price arrangements, value billing and so on with counsel on certain matters, according to the survey.

Bowe, Encyclopaedia Britannica: We've been successful in negotiating the level of professionals. We've also received straight discounts from the billing rate on occasion.

Farley, CTA: For very complex, heavy matters, I prefer the blended rate approach coupled with an understanding with the attorney about what results are expected of him. If you force a firm handling a very complex matter into a budget or a ceiling - which from your standpoint is important - it may mean they won't do something that perhaps they would have done if they had more freedom. With a blended rate and close communication, you give the firm the latitude to do creative things.

We have 2,200 cases pending, 2,150 of which are personal injury. Of those 2,150, probably 2,000 are slip-and-falls. For those cases, we dictate what we will pay - \$80 an hour - to try these cases. We have people who want these cases lined up around the corner. So from that end of the business, it's a fixed fee.

Hale, Corporate Legal Times: Pete, did you use any alternative billing?

Wentz, Helene Curtis: We have a discounted fee in one situation on a regular matter with respect to product liability with a firm from Chicago.

It is my concern that with everybody out

the ones that will be charged 50 cents per page for copying. That's one of the things we're looking at - to work with the firms we use along the partnering concept. We think we ought to get a fair fee. But just because they use value billing with one client, we don't get gouged because we're trying to be partners.

Fischer, Arthur Andersen: Economically, when you ask outside counsel to enter into a fixed price situation you are shifting the cost risks to them that would have resided with the company. You've got to pay a premium for the outside law firm and that may end up in the long term costing more.

Wentz, Helene Curtis: Well, the law firm may also say, "We're not making the money we thought we'd be making here, so we'll make sure we keep the fees high over here with clients who have not negotiated fixed fees."

NETWORK BEYOND OLD AND BOY

Hale, Corporate Legal Times: I thought it was very interesting that the old-boy network appears to be going away. Referrals were the last thing the general counsel picked when asked how they choose law firms. Maybe networking on the golf course is not what it's cracked up to be. Things like specialization and location were ranked as more important.

Paige, NutraSweet: I think it depends on the case, because it's really hard to generalize. In the law departments I've worked in, we try not to let our friendships get in the way of winning cases. I think we do that pretty well. We do more blocking and tackling than creative fee arrangements. My philosophy is that you can only overcharge me once before I go somewhere else. And secondly, at our company we're looking for specialty litigators who know what they're doing in the jurisdiction they're in, who have a track record. We're not really interested in what their letterhead may say. That's how we operate.

As far as the old-boy network, it is definitely gone. Many of the litigators who work for us are women, and so those days are gone.

Fischer, Arthur Andersen: That comes through loud and clear in the survey. The No. 1 way general counsel select outside counsel is based on the individual's capabilities and credentials.

Farley, CTA: I slightly disagree with Steve. There's a difference between referrals and the old-boy network. When you look at referrals, some come from people with authority and some do not. Say you have a complex matter in Chicago, and there are five, six, seven, eight firms that could handle the matter and do it well. When you get in a situation like that, and a referral comes with some authority, most general counsel will take it into consideration. With regard to the old-boy network, it may not be as prevalent as it has been historically, but it is definitely still alive and well.

You play golf not only because you like to play golf, but because that is where you

activities—civic, social and otherwise—because that is where you cultivate relationships. I don't consider that a referral so much as a cultivation of an association.

Howell, Quaker: I think there's a network. It's probably not old, and it's probably not just boys anymore, but it's often useful for referrals.

Paige, NutraSweet: It's really talking to people, like the people around this table. "Have you handled a case like this? What was the result?" If that's what you mean by "network," I suppose there's a network. But I don't play golf—or haven't since I was a caddy 15-some years ago—and I don't belong to any clubs. But I haven't had any trouble finding other general counsel to talk about who they've had good successes with.

Hale, Corporate Legal Times: Or attorneys who are willing to and wanting to do the work.

Paige, NutraSweet: Exactly.

Fischer, Arthur Andersen: What about automation in your law departments? Within our practice, we have invested heavily in developing techniques to drive the internal cost down through better use of automation. What kind of success have any of you had with respect to the use of automation internally and how you are linked with your outside counsel?

Farley, CTA: At CTA, we are in the infancy in terms of automation, but I can foresee that in the future we will be heavily automated. We have to do it in order to be competitive, both from a practice standpoint and from a bottom line standpoint. So it's inevitable.

Howell, Quaker: We're heavily automated. All the lawyers and support staff have computers and have used them with varying degrees of proficiency. We've recently obtained some CD-ROM disks. One of the interesting issues is how far to automate our library. We are definitely moving in that direction for space reasons and cost reasons. All of us in the law department are on a network.

One thing within our company I really enjoy is that the traditional role of the secretary is starting to fade away. We don't call people who traditionally held that position "secretaries" anymore, and quite rightly so; we call them administrative assistants. They're closer to paralegals than they are to traditional secretaries. They're doing more and more work, and we give them as much responsibility as they're able to handle. The only frustrating part about it is when people phone and they have to type in last names on the phone pad. Other than that, it has been a tremendous help to our company.

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Bowe, Encyclopaedia Britannica: We are seeing a change internally first. It hasn't put so much in the communication links between the law department and the out-

throughout the company and its non-U.S. activities is getting us a lot closer to the client. Our lawyers are getting a lot closer to outputting their own work product some of the time. Those efficiencies will continue so that within the next three or five years, we will have direct links between the law department and outside counsel.

Farley, CTA: Part of the issue turns upon what the automation is used for. A computer can tell you the average cost of the case; it can tell you the average verdict value for a "leg-off amputation below the knee in Cook County." It can't tell you: Should I settle this particular case for this amount of money or should I try it? Should

ROUNDTABLE continued on page 44

"Just as we would not choose one chemical supplier to supply all of our chemical needs, we don't choose one law firm to provide all of our legal needs. We've segmented our needs, and then have built relationships with firms that we've dealt with in the past to meet those needs."

Roy A. "Pete" Wentz,
Helene Curtis



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"We can demonstrate that the stuff we keep in-house would cost two or two and a half times more if we put it outside. On the other hand is the reality of the company's budget and current downsizing generally."

**Richard H. Irving,
Duchossois Industries**

CONTINUED FROM PAGE 43

CORPORATE LEGAL TIMES

ROUNDTABLE

I take this path or should I take that path? So hopefully there will always be a role for us.

Hale, Corporate Legal Times: I'm sure everyone around the table is glad they don't have to worry about amputated leg cases, like you do, Bill.

The survey showed that as far as hiring support services, in the past when you hired an outside counsel you would entrust them with hiring the litigation support provider. This year that number has dropped dramatically, from 45 percent to

only 26 percent who allow that. Has anyone made a similar change? If so, why?

Paige, NutraSweet: Historically, in our company we made the final decision but we certainly consulted with our trial lawyers and outside counsel, depending upon what the matter was. But I think it's the role of general counsel to put the team in the field and give them the support they need, with input.

Wentz, Helene Curtis: Often, we have better access to experts or survey people. We probably have better relationships and better input than outside counsel would.

Farley, CTA: It goes back to your initial discussions with the attorney about the philosophy of the particular matter and making sure you're on the same page with regard to the types of staffing – paralegals, associates, what have you – that will go into it, and where you want to be consulted for changes.

Also, with regard to very significant cases, as a general counsel it's vital that you be involved in the decision as to whom the expert will be. You have a knowledge of the types of cases that have gone to trial before, the jury's reactions to certain things, and you need to make a determination about how comfortable you feel with how well the expert knows the area and will perform on the stand. You don't want to over-engineer the decision, but I do think at some point there has to be a check.

Irving, Duchossois: Sometimes the cost of this expertise is literally equal to the cost of outside counsel engagement. We're talking a comparable investment, so you have to have a hold on it.

Fischer, Arthur Andersen: Let's turn to the future. What are the top issues you have to deal with over the course of the next three to five years?

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Farley, CTA: If I were able to increase the size of my internal staff by X number – because so many of my matters are routine and on the same level – I could greatly reduce my outside counsel budget. If I could isolate the types of specialized cases that have to go out, that would greatly help me. From a company standpoint, the operating bottom line can't afford to let me do that, and that puts me in a very difficult dilemma. On one hand I know what is the best way to go; on the other hand, I have to somehow be creative within the budgetary strictures I have.

Irving, Duchossois: It's not just a problem for public agencies. That's exactly what I think the issue is: We can demonstrate that the stuff we keep in-house would cost two or two and a half times more if we put it outside. If you follow that to its logical conclusion, the theory would be to grow the law department and keep more things in-house. On the other hand is the reality of the company's budget and current downsizing generally. You have to overlay that on top of the legal cost efficiency.



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between management and outside counsel, or managing outside counsel, they will be very small and perhaps laymen will handle it. However, to the extent they can demonstrate that they can bring things in-house with the same quality of work, there's a chance for growth or at least stability.

Wentz, Helene Curtis: One of your questions had to do with the whole issue of internal investigations. I believe with the sentencing guidelines, with sexual harassment and with other employment issues, legal departments will be called on to be an internal investigator or at least participate in that. What is our role? Who is our client? There will be increased pressure put on corporations to report violations and police themselves.

Bowe, Encyclopaedia Britannica: I'd like to second that. Partly it may be the federal sentencing guidelines, partly it's seeing some of the government attitudes and regulations drifting over into the commercial practice area from the pentagon procurement area and the reforms that emerged in the mid-1980s. I think we may see a lot more of that in the next five years.

The other trend that will be confronting us is the changing business. This has been a business that traditionally has been a very stable publishing business in the print form. When you're talking about putting reference works on the Internet for schools and libraries later this year, we know that we will see demands in the intellectual property area that haven't been there before. So that will keep our attention internally.

Paige, NutraSweet: We are making a major push to globalize in the next few years, and our lawyers are all over the world now. To some extent this is a new area for them, and we are obviously partnering up with the best local firms we can find. I see that continuing with a lot of companies.

Howell, Quaker: That's one of my biggest challenges as we grow disproportionately overseas, compared to our history. I'm dealing with transferring lawyers who have always been in Chicago to overseas locations. We also hired people from these foreign countries who we hope will understand how we do business.

In regard to TQM, at Quaker we call it re-engineering, and what that is doing is flattening out the organization and taking people out of their "functional silos." I'm not quite sure how that works for the law department yet, but it's the very fashionable thing to be doing at Quaker, and to some extent the law department has to do it. They're all part of a number of teams, and everybody on the team has to accomplish a specific goal, and intentionally the lines between the functions from which they come are blurred.

The law department is a bit different because we have a fiduciary obligation, and there are laws that we have to deal with in addition to abetting and implementing some of the business goals. That's something we're still working through. I think that's the challenge for legal departments

as lawyers.

Hale, Corporate Legal Times: But you don't know exactly how that change will play out.

Farley, CTA: One of the challenges I noticed is the impact of automation. You could conceptually design a legal department that has very few lawyers, but through the use of automation could manage many cases. And from a morale standpoint, which is very important to a legal department, it becomes a very complex issue when you can eliminate the jobs of five, 10, 15 people with one computer. We're trying to find an answer that is both cost effective and yet humane.

CLT

"One of the major changes that we've all seen in the internal corporate legal environment is the growth in employment law cases. That's been a major stimulus to growth."

**William J. Bowe,
Encyclopaedia
Britannica**



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