

CORPORATE LEGAL TIMES

Volume 9, Number 97

The Management Monthly for Corporate Legal Executives

DECEMBER 1999 \$15

Tomorrow Never Knows General Counsel Gaze Into the Crystal Ball

BY STEVEN ANDERSEN

IN THE YEAR 3000, the in-house legal function will be performed by synthetic chemical compounds that have been implanted in the laboratory-grown brains of all corporate officer-bots and employees to provide apropos transactional, compliance and contractual data throughout the course of the business day....

OK, OK, we at *Corporate Legal Times* are the first to admit that in the business-legal world, where significant change is measured in months, not even years, the passing of a millennium is something akin to a geological epoch.

But on the other hand, we just had to get in on the big Y2K soiree.

So we asked a random smattering of general counsel from companies great and small to gaze into their respective crystal balls and

forecast the future of the legal department. Not all the way to the year 3000, mind you, just into the coming decade.

Sure, it's a completely shameless millennium tie-in (and don't any of you wet blankets start with that the-millennium-doesn't-change-until-2001 line), but we're not asking all that much.

From the scourge post-recession outsourcing, through the speedy rise of legal technology, to today's in-house hiring boom, the 1990s have been a time of immense change for in-house legal practice. We asked chief legal officers to reflect on what they've learned from this turbulent decade and predict developments in the next 10 years.

So fine, it's really more of a fin-de-decade questionnaire. But can you really blame us for trying to tap the power of the serial zero? A chance of this magnitude comes along only once in, well, a millennium.

PREDICTIONS continued on page 88

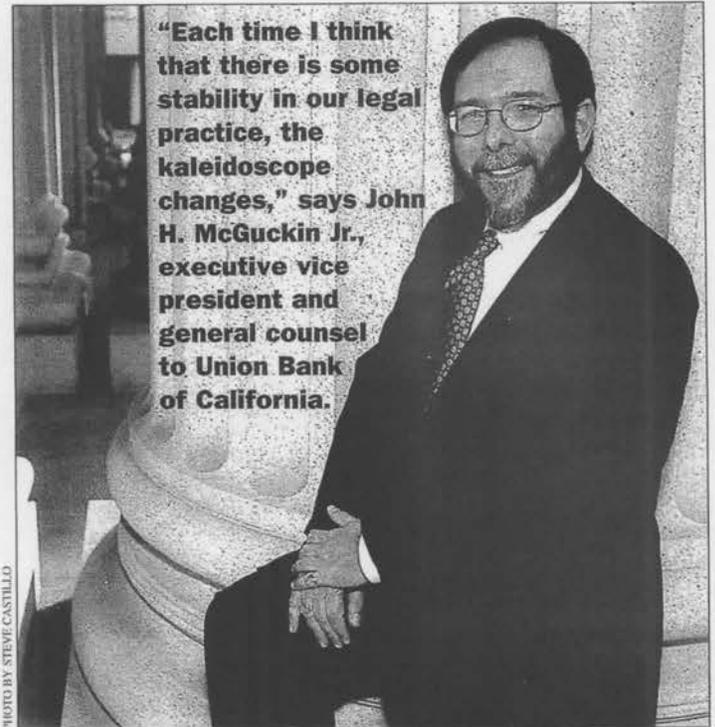


PHOTO BY STEVE CASTILLO

Inside

Business Without Borders BWB14 Goliath Meets Goliath

In this year's most important global deals, European companies proved every bit as ruthless as their American peers.

IP Dialogue

31 Name Your Price

With Capt. Kirk as spokesman, Priceline.com is exploring strange new worlds of e-commerce.

Circuit-by-Circuit

65 Recruiting Information

This month's Circuit-by-Circuit section takes an in-depth look at the in-house job market across the country.

Business Litigation

81 Damned If You Do...

Good-faith efforts to look at ways to improve safety can come back to haunt companies when lawsuits get filed. Wal-Mart learned that the expensive way.



PHOTO BY MAUREEN G. DOHERTY

"You have to remember that counterfeiting is a business and, in some cases, it produces employment and revenue for a local area."
— Jack A. Green, Converse Inc.

Corporate Legal Times—Minority Corporate Counsel Association Diversity in Corporate Law Departments Survey

The Best Intentions May Yet Pay Off

BY AMY I. STICKEL

THE NEWS still isn't worth shouting about, but at least some of it is getting better. While corporate legal departments remain overwhelmingly non-diverse, according to the Third Annual Corporate Legal Times—Minority Corporate Counsel Association Diversity in Corporate Law Departments Survey, there is an uptick—albeit a small one—in the number of ethnic minorities in U.S. legal departments.

And more legal departments are taking either formal or informal initiatives to increase the number of

employed a total of 1,974 attorneys and a mean average of 48 attorneys—12.9 percent of in-house counsel were minorities. That is up from 11 percent in last year's survey. The survey was sent to companies in the Fortune 500.

In terms of ethnic representation, 7.3 percent of lawyers in responding legal departments are black, 2.5 percent Asian and 2.3 percent Latino.

It should be noted that respondents to diversity surveys tend to be self-selective: Few legal departments with poor records are likely to participate.

Respondents seem to be taking the issue of diver-

Defenders of the Mark Companies Battle Global Stolen And Counterfeit Goods Industry

CORPORATE LEGAL TIMES

ROUNDTABLE

The opening of national borders to freer trade and the rapid emergence of the Internet are among the trends posing new challenges to the protection of valued brand names.

This month, we talked with corporate counsel and other experts who are fighting against counterfeiting, parallel trade and rip-offs.

They discuss strategies that are needed in a world where IP is increasingly valuable, but where it is also increasingly easier to attack.

Power Panel begins on page BWB24.

*****5-DIGIT 60604
2604703 P129 P19
WILLIAM J BOWE
ENCYCLOPAEDIA BRITANNICA INC
310 S MICHIGAN AVE
CHICAGO IL 60604-4299

CONTINUED FROM PAGE 1

Predictions

QUESTION: WHAT'S THE MOST IMPORTANT LESSON YOU AND YOUR LEGAL DEPARTMENT HAVE LEARNED IN THE 1990S?

"That personal relationships are as important to maintaining good contractual relationships as your legal positions on them. I work for a licensing company. We have 100 licensees across the country. It really doesn't help you to go forward with a business contract if you have to go all the way to the Supreme Court to enforce it."

—Eric B. Simon, general counsel, California International Chemical Co.

"Lawyers, especially in-house lawyers, need to know how to do strategic thinking and strategic planning with their clients. It's not enough to merely be able to answer the question of the day."

—Anastasia Kelly, senior vice president, general counsel and secretary, Sears, Roebuck and Co.

"While lawyers have been taught to pay great deference to case law and statutes, the reality of litigation practice in the 1990s has shown us that, in many instances, the fact pattern overshadows the law. This makes litigation practice even more difficult and challenging."

—Christopher C. Nern, vice president and general counsel, The Detroit Edison Co.

"Technology is the Santa Claus of the



PHOTO BY JOE COOMBER

"There's been an awakening of the need for a marriage between the law department and the business units. We try to work lock-step, arm-in-arm with our management to achieve corporate goals in an ethical and legal manner."

—Dennis P.R. Codon, vice president, general counsel and chief legal officer, Unocal Corp.

1990s. It's had such a powerful effect on the in-house practice of law. You can say, 'Yes Virginia, with technology you really can do more with less.' The practices have become much more efficient than anyone would have predicted at the beginning of the decade.

"As general counsel of a company that started the decade as a print reference publisher and ended it as an Internet information company, I've seen that effect not just on the

legal side but on the business side. The company has totally restructured itself to adapt to a totally new business model."

—William J. Bowe, executive vice president, general counsel and secretary, Encyclopedia Britannica

"Change is a constant in corporate America, and both the general counsel and the legal division have to adapt to that reality. Each time I think there is some stability in our

legal practice, the kaleidoscope changes. New technology, a merger, competition from compliance professionals, the departure of a valued in-house lawyer, another hike in the irrational expense of outside counsel, another management-inspired cost-saving initiative, instability in outside counsel, all complicate our simple practice. Changes in the law are insignificant in comparison.

We've had to abandon organizational structures, retool lawyers with experience and expertise into totally new areas, sever long-term relationships with outside counsel and retrench from a proactive, preventive law mentality to being largely reactive. Our legal division changes on a daily basis. The new millennium won't be any different."

—John H. McGuckin Jr., executive vice president and general counsel, Union Bank of California

"A legal department must be able to change and retool to support the businesses of its parent corporation and subsidiaries. Technology has leveraged the efficiency of the legal function and helped measure our performance in ways that can be competitively benchmarked."

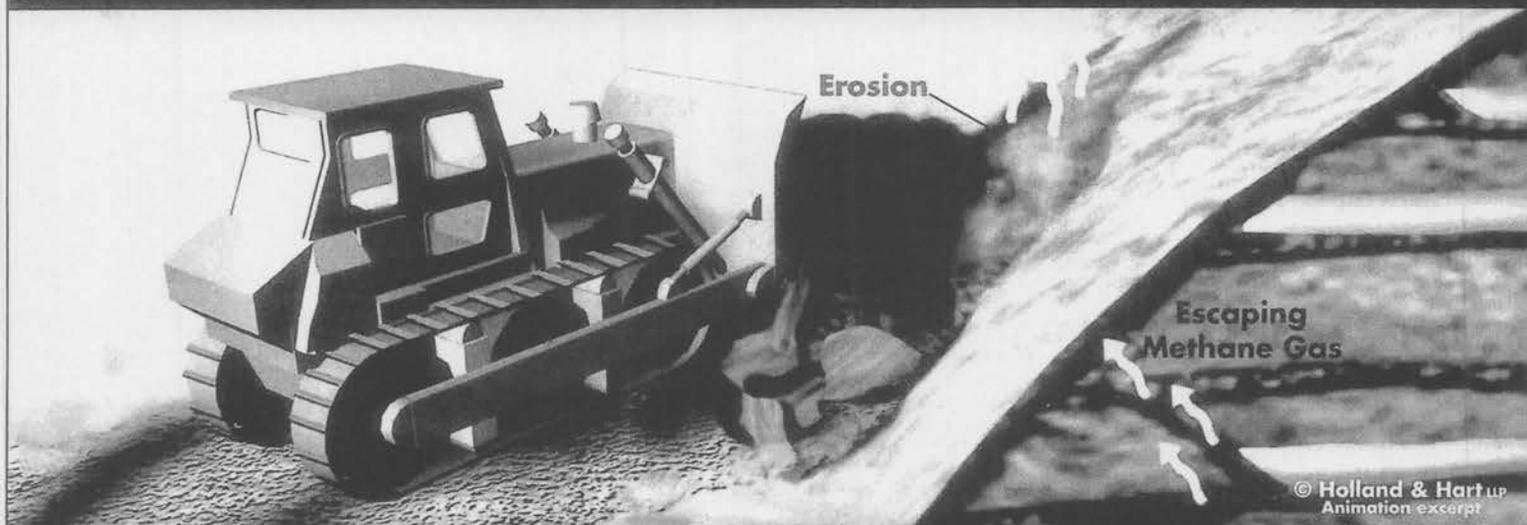
—Eugene P. McGreal, associate general counsel, J.C. Penney Co. Inc.

"The amount of law work continually increases, and, therefore, one must constantly plan on how to appropriately handle this increased work in the future with a balance between inside and outside law talent."

—W. Wayne Withers, senior vice president,

PREDICTIONS continued on page 90

THIS PICTURE WAS WORTH ... A SIGNIFICANT SETTLEMENT.



Negotiations were progressing at a snail's pace. The other side wouldn't make a reasonable offer. Then we showed the opposition the computer animations we prepared in-house at Holland & Hart.

Working with experts and attorneys, our animators produced a tape which conveyed points of our argument difficult for anyone to verbalize. One hour later, we had an offer our client was happy to accept.

To communicate with people in today's complex world, you need to use the media of today. At Holland & Hart, we have an entire department devoted to digital video, computer graphics and animation, unparalleled by any firm, anywhere.

And because the facility is in-house, whether for large or small cases, we quickly tailor the exhibits to maximize utility and minimize costs for our clients.

For more information or to arrange a tour of the Holland & Hart Trial Preparation Center, contact John C. Tredennick, our Technology Partner, at (303) 295-8092 or jtredennick@hollandhart.com.

HOLLAND & HART LLP
ATTORNEYS AT LAW

Partnering Law & Technology to Meet Your Needs
www.hollandhart.com

COLORADO, IDAHO, MONTANA, UTAH, & WYOMING



"The evolution [of technology] will be extraordinary and will likely go far beyond even the optimistic views of early adopters of legal technology."

—Christopher C. Nern,
The Detroit Edison Co.

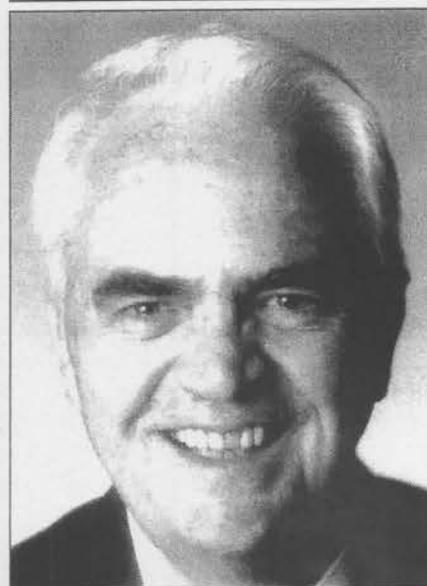
"Lawyers, especially in-house lawyers, need to know how to do strategic thinking and strategic planning with their clients. It's not enough to merely be able to answer the question of the day."

—Anastasia Kelly,
Sears, Roebuck and Co.



"All attorneys will be available to handle the legal work of the parent corporation and subsidiaries as a whole."

—Eugene P. McGreal,
J.C. Penney Co. Inc.



CONTINUED FROM PAGE 88

Predictions

secretary and general counsel, Emerson Electric Co.

"We've learned that it's very difficult in our industry to truly comprehend the significance of what the law department can do. We in the law department have been able to demonstrate that there's a lot of value attached to our efforts. There's been an awakening of the need for a marriage between the law department and the business units. It's more than simply handling contentions and disputes. We try to work lock-step, arm-in-arm with our management to achieve corporate goals in an ethical and legal manner."

—Dennis P.R. Codon, vice president, general counsel and chief legal officer, Unocal Corp.

QUESTION: HOW DO YOU FORESEE YOUR LEGAL DEPARTMENT EVOLVING OVER THE NEXT DECADE?

"My department over the next decade will increase in size with more law work being done inside. Inside lawyers will be physically located in more countries than today, particularly in Asia, so as to have a better understanding of the local legal issues."

—W. Wayne Withers, senior vice president, secretary and general counsel, Emerson Electric Co.

"The legal department, in conjunction with outside counsel, will evolve into an interconnected virtual law firm with an associated professional collegiality that not only provides best-in-class legal services but also affords significantly enhanced personal satisfaction for inside and outside lawyers."

—Christopher C. Nern, vice president and general counsel, The Detroit Edison Co.

"No general counsel can realistically predict what the legal division will look like within a year, let alone within a decade. I don't have the slightest idea what my company will look like within a year, so how do I know what the legal division will look like? All I know is that neither the company, the legal division nor I will be as we are now. My planning is short term at best."

—John H. McGuckin Jr., executive vice president and general counsel, Union Bank of California

"As lawyers become better strategic thinkers and planners, two things will happen: Lawyers will become strategic partners with their business clients, and they will be able to think of themselves as responsible for managing enterprisewide risk."

—Anastasia Kelly, senior vice president, general counsel and secretary, Sears, Roebuck and Co.

"Our law department will be much more commercial in its focus. I see litigation becoming less voluminous. It will still be an important aspect—we certainly will continue to defend ourselves and take action when we've been harmed—but we're becoming more commercial in nature. We're helping to complete transactions as opposed to

merely managing disputes."

—Dennis P.R. Codon, vice president, general counsel and chief legal officer, Unocal Corp.

"All attorneys will be available to handle the legal work of the parent corporation and subsidiaries as a whole. While a great majority of the attorneys will be centrally located in the parent company legal department, they [will be] available to provide legal services across the corporation as a whole and will work collaboratively with their attorney counterparts who are assigned to specific subsidiaries.

A key goal of the legal department will be to operate on a shared-services basis to provide legal services across the corporation as a whole without duplication."

—Eugene P. McGreal, associate general counsel, J.C. Penney Co. Inc.

QUESTION: WHAT CHALLENGES DO YOU ANTICIPATE WITH REGARD TO THE GLOBALIZATION OF BUSINESS?

"The globalization of business will open up all the borders around the world with respect to laws and regulation. For many companies, one of the first challenges they will face is the threat to their intellectual property assets and how best to resolve those threats."

—Anastasia Kelly, senior vice president, general counsel and secretary, Sears, Roebuck and Co.

"With the future globalization of business, I anticipate there will be a much closer partnering relationship between U.S. corporations and foreign law firms than previously. This relationship will more closely mirror the relationship that U.S. corporations have with U.S. law firms."

—W. Wayne Withers, senior vice president, secretary and general counsel, Emerson Electric Co.

"Providing legal services within the financial services industry on a global basis won't be any more challenging or frustrating than being a lawyer now on a statewide or national basis. We've lived in a global business and legal environment for a decade. Y2K proved that."

—John H. McGuckin Jr., executive vice president and general counsel, Union Bank of California

"In some respects, life is getting easier. The same kind of technology tools that have made the practice more efficient here have immensely eased the burden of coordinating complex transactions on a global basis. We'll also see globalization of law practices accelerate in the next decade."

—William J. Bowe, executive vice president, general counsel and secretary, Encyclopaedia Britannica

"We have a majority of our business overseas. We've internationalized our law department in the sense that we've tried to become a unit. When I became general counsel in 1992, our foreign lawyers were sort of just there in their locations. There was little coordination taking place. Now we're communicating daily.

"We're an international law department functioning together as a unit. We'll see a lot

mor
—De
cou
Unc

"Wl
the
ope
lega
loca
inte
busi
esta
rela
lega
—Eu
cou
"It v
tect
—Et
Inte

QUE
CHA
THE

"Th
will
view
—Cl
gen

"Wt
our
tem
intr
our

nore international coordination.”

-Dennis P.R. Codon, vice president, general counsel and chief legal officer, Unocal Corp.

When a corporation does business outside the United States, especially in less-developed countries, the initial challenge for the legal department is to identify and retain local counsel familiar with working with international companies to achieve their business objectives. The next challenge is to establish an effective and efficient working relationship between the local firm and the legal department.”

-Eugene P. McGreal, associate general counsel, J.C. Penney Co. Inc.

It will become increasingly difficult to protect international intellectual property rights.”

-Eric B. Simon, general counsel, California International Chemical Co.

QUESTION: HOW WILL TECHNOLOGY CHANGE YOUR LEGAL DEPARTMENT OVER THE NEXT 10 YEARS?

The evolution will be extraordinary, and will likely go far beyond even the optimistic views of early adopters of legal technology.”

-Christopher C. Nern, vice president and general counsel, The Detroit Edison Co.

We will continue to develop and enhance our matter- and document-management systems and the use of our internal corporate intranet. We will continue to work toward our goal of a virtual legal office by using

web-based legal information sources and the reduction of hard-copy library materials.

“We also plan to explore the development of a legal extranet with our law firms.

-Eugene P. McGreal, associate general

tion and otherwise. Internally, technology should allow us to communicate more effectively with each other and across practice areas so that we’re really leveraging technical skills and our knowledge base.”



PHOTO BY JOHN MCNEILTY

“Technology is the Santa Claus of the 1990s.”

-William J. Bowe, Encyclopaedia Britannica

counsel, J.C. Penney Co. Inc.

-Anastasia Kelly, senior vice president, general counsel and secretary, Sears, Roebuck and Co.

“I see technology providing the ability for in-house counsel to have real-time conversations with all outside counsel—in litigation

and otherwise. Internally, technology should allow us to communicate more effectively with each other and across practice areas so that we’re really leveraging technical skills and our knowledge base.”

time it takes to complete legal matters will be compressed by a factor of 100 or more.

The Internet has allowed us to virtually eliminate in-house legal libraries and give our lawyers access to libraries and other sources of information all over the world, right from their desks. No need to send junior lawyers and paralegals to the library with a yellow pad. Electronic legal billing and bill payment add control, reduces disputes and makes receipts more timely. Even settlement offers are being done online.

All this is now and next year. In 10 years, dockets will clear and cases will be adjudicated in days instead of months and years.”

-George E. Seegers, director of corporate administration, Citigroup Inc.

“It will be amazing, but it’s hard for me to predict. I’m not a techie. The limits are unknown. I just know it will happen.

-Dennis P.R. Codon, vice president, general counsel and chief legal officer, Unocal Corp.

“The real impact of technology has already been felt. We no longer have the time to think. Our clients feel that a fast answer is better and more preferable to the right answer.

Technology will continue to make research obsolete. Fortunately, the computer can’t replace judgment and common sense—yet.”

-John H. McGuckin Jr., executive vice president and general counsel, Union Bank of California

Prepared?

You'd Better Be.

Without an enforceable compliance program in place, you may be caught dangerously off guard. The consequences: criminal fines, jail time, personal civil liability, or worse. **Don't wait until violations happen to create and enforce an effective compliance program.** Contact Dickie, McCamey & Chilcote for a *Compliance Alert*™ legal audit. Today. And prepare yourself for the future.

*Bankruptcy • Construction • Corporate Compliance
Employment • Environmental • ERISA
Health Care • Litigation • Privately Held Businesses*

DICKIE, MCCAMEY & CHILCOTE, P.C.
BECAUSE COMPLIANCE MATTERS

Pittsburgh, Pennsylvania • www.dmclaw.com
1-800-393-6404