



## 401 Leadership: Getting a Seat at the Top

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*Senior Vice President & General Counsel*

AOL Europe

## Faculty Biographies

### **Juan E. Cabrera**

Juan Eduardo Cabrera serves as the international general counsel for BMC Software. In this role he is responsible for managing all legal matters, including corporate governance, intellectual property, licensing and services contracts, strategic partnerships, disputes, and corporate transactions, for BMC's legal operations outside of the continental United States. In addition, Mr. Cabrera is a member of BMC's European Management Team, which manages strategy and planning for BMC's sales and operations in the EMEA region.

Prior to joining BMC, Mr. Cabrera served as Chief Technology Counsel for AMVESCAP, PLC, and a publicly traded money manager. Prior to AMVESCAP, Mr. Cabrera was an associate in the technology and commercial transactions section at Locke, Liddell and Sapp, where his law practice focused on the representation of emerging and established technology-based companies.

Mr. Cabrera holds a B.A. from Texas A&I University and is a graduate of the University of Texas School of Law.

### **Phil Taub**

*Deputy Practice Group Leader, Business Group*  
Nixon Peabody LLP

### **Anthony E. Wales**

Tony Wales has been General Counsel at AOL Europe. He is responsible for the company's legal affairs across Europe and in particular in AOL's three main markets of the UK, France and Germany.

Before joining AOL, Mr. Wales was the general counsel at The Economist Group for several years. He qualified as a UK solicitor and has worked extensively overseas, including the United States, Hong Kong and Central Europe.

## Leadership: Getting a Seat at the Top Table

Chairman:

Tony Wales

Senior Vice President and General Counsel

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## What is the top table?

Board of directors, board of managers, group management committee, executive council, management board ... any form of decision-making body that manages your company's (or your division's) operational or strategic undertakings

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## Is it an appropriate place for a lawyer?

Keeper of the corporate values – “the conscience of the company”


Corporate culture - opportunity to reach to all parts of the company


Leadership - integrity, respect, trust – generates trust within the company


Communication skills, influencing, managing, leading ...the key attributes of a successful in-house lawyer

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## What can a lawyer contribute that others cannot?

No P&L responsibility, no line of business control, typically part of central services ... if lawyers do have a role at the top table, what is it 

Does it cause a conflict of interest in becoming too closely identified as part of the management of the business 

Can the lawyer still give independent advice if he/she is part of the corporate management team 

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## **Roles a lawyer might play ...**

As General Counsel – legal adviser

As General Counsel and Company Secretary – legal and corporate adviser

As a quasi non executive director – an independent voice

As an outside non executive director – outside experience

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## Legal advisory role

Operational role - in tune with the business, aware of risk issues

Knowledge of operational, organisational and strategic issues

Immediate guidance on legal aspects of business affairs

Independent advice – being both a policeman and a fireman is part of the job

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## Corporate advisory role

Company secretary – secretary to the board, manages meetings, etc

Board powers – delegation of powers, articles of association

Investor relations – dealing with shareholder issues, reporting to shareholders on compliance issues

Directors' duties – conflicts, disclosure of interests... but better from outside counsel?

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## An independent voice

Use operational knowledge in strategic debates ... but others have the same knowledge?

Often will have project management or implementation role

But can an employee be truly independent?

Is a lawyer more suitable than another executive?

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## **As a non-exec director of another company**

Use operational knowledge to share experience – develop best practice for benefit of both companies

Scope limited by confidentiality and likely conflict of interests if within same business sector – may limit the value of operational experience?

Focus on legal process, corporate procedures – e.g. compliance, reporting

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## Governance and Compliance role

Growing awareness and importance of governance -  
Sarbanes-Oxley Act has long tentacles

Desire for best practice and opportunity to manage  
perception - "tone at the top"

Comfort for other directors, especially outside directors

Lawyers recognised by regulators as having unique  
experience in this area

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Philip B. Taub, Esq.



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## About Nixon Peabody

- Over 650 attorneys collaborating across 15 practice areas in 16 cities across the U.S.
- Ranked #64 in revenue in *AmLaw* Top 100
- Recently named one of the “100 Best Companies to Work For” by *FORTUNE* Magazine

## About Nixon Peabody

- Ranked 5<sup>th</sup> by *Private Equity Analyst* for the number of funds negotiated or structured and 19<sup>th</sup> for the number of deals closed
- Ranked by Thomson Financial as the 2<sup>nd</sup> most active underwriters' counsel in the U.S.
- Named among the top 25 IP litigation firms by *IP Law Bulletin*
- Ranked by *Intellectual Property Today* among the top 10% of patent firms and among the top 25% of trademark firms



## Source of Presentation

- Personal observations
- Polled U.S. in-house attorneys
  - Arch Insurance, Au Bon Pain, Babcock Borsig, Brookstone, Dynamics Research Company, The Elliot Healthcare Group, Linden Companies, Philips, SunAmerica, Tyco, Yahoo!
- Looking for your input too!

## What is the Primary Role of the In-house Lawyer?

- Provide legal counsel
  - Objective advice
  - Identify risks
  - Cost benefit analysis
  - Protect the company from claims
- Assure that business decisions take into consideration legal ramifications

## What is the Primary Role of the In-house Lawyer?

- GC needs to manage the in-house lawyers
- Staff attorneys
  - Address routine legal matters so management does not have to
  - Train less experienced employees

## Expanded Role of the In-house Lawyer in the U.S.

- Intensity of the documentation and the unreasonably contentious nature of litigation forces a larger strategic role
- Report at a higher level in the organization
- View from the CEO and the Board
- Europe is catching up fast = opportunity

## Critical Skills to “Getting a Seat at the Top”

- Become a full member of the business team
  - Full understanding of your industry and your product
  - How else can you persuade business people to seek your counsel?
  - Identify legal issues early in the process
- Strong substantive skills
  - Build confidence in your opinions

## Critical Skills to “Getting a Seat at the Top”

- Be a leader and prove strategic value
- Take appropriate initiative
  - Identify new developments
  - Update existing corporate policies
- Be a guardian of the company’s reputation
  - Do not do anything to impinge company reputation

## Obstacles to “Getting a Seat at the Top”

- Corporate culture (non-compliance)
- Weak interpersonal skills and inability to navigate the politics
- Ivory tower
- Lack of creativity, confidence and responsiveness

## Obstacles to “Getting a Seat at the Top”

- Inability to translate legal risks into business recommendations
  - Don't just cite legal chapter and verse
  - Add value, don't be a speed bump
  - Too preoccupied with risk
- Inability to accept and defend business decisions that you did not recommend initially