



# THE CORPORATE COUNSEL

Vol. XXXV, No. 2

SPECIAL SUPPLEMENT

MARCH-APRIL 2010

## 35 Years!

### Time Flies When You're Having Fun

#### **Part I: The Launching**

Time flies when you're having fun. It's hard to believe that 35 years ago I started *The Corporate Counsel*.

As we reach this milestone, I thought I would share some memories and highlights. (Our actual anniversary will be celebrated with a "35th Anniversary Gala" for our entire community of readers at our Annual Conference on September 20th in Chicago. John Olson, Herb Wander and Stan Keller are Co-chairs of the Hosting Committee. Please go to [The CorporateCounsel.net](http://TheCorporateCounsel.net) for more information.)

#### **A Little Background**

After graduating from Yale Law school in 1967, I landed a job at the SEC (with an annual salary of \$6,700 in New York City). Roberta Karmel, who later became a Commissioner, was my first branch chief and Stan Sporkin was the Director of the Enforcement Division. I then set out for Wall Street working for the General Counsel of J&W Seligman and then co-founded a start up from 1969-1971, serving as the COO. [We had an exclusive license to televise large-screen events to the youth market. Think rock concerts like Woodstock, which we came close to televising live to major locations, and road college football games televised to home campuses. The Ed Sullivan Company attempted to acquire us. We turned them down because we thought they would corrupt our medium. My old Horace Mann high school friend, Lloyd Feller, who was counsel for Sullivan, still reminds me of how that would have made us a bundle and led to an entirely different life and lifestyle. I'm very happy with this one, thank you.]

During that period, I did a lot of traveling and "saw the light" that there are many attractive places to live outside of New York City. My wife, Laren, and I and our two very young children (a 2-month-old and a 2-year-old) moved to California in July 1971, with \$5,000 to our name and a few potential job opportunities, having interviewed with Bill Witter, CEO of San Francisco-based Dean Witter, before I left New York.

That summer we made an offer on a \$40,000 house in Berkeley, subject to obtaining a mortgage—but I knew that no sane bank would extend a mortgage to someone who did not have a job. Boy, was I surprised (and a bit concerned) when the broker called me one day saying "Congratulations, the bank has approved the mortgage. We close in 30 days."

Fortunately, within a week, I got a call from Bill Witter's assistant, Midge, with whom I had developed a good relationship and had been constantly persisting to just let me prove myself. (As an



aside, my two favorite words are *anticipate and persistence*. Alan Beller, in his landmark speech at our 2004 Executive Compensation Conference, called my approach “unflagging.” Midge said something like “Mr. Witter has said to find you a position.” So I went for my job interview, where my boss-to-be said to me “I don’t know who you are and what your connection is with Bill Witter, but I’m hiring you.”

### **The Adoption of Rule 144**

At the very time of my move, the SEC was proposing the adoption of Rule 144 (which became effective April 15, 1972). I quickly saw an opportunity. I became responsible for clearing/approving every Rule 144 transaction that the firm processed nationwide for its clients. In the course of my responsibilities, I was frequently calling the Staff in Corp Fin’s Office of Chief Counsel raising interpretive questions that arose from real-life, real-time situations. Many of my questions resulted in the issuance of Staff interpretive letters. (At a conference, Peter Romeo, who as Chief Counsel was responsible for many key Rule 144 interpretations and rule amendments, noted that more Rule 144 interpretive letters had been issue to me than any other practitioner.)

During this time, Richard Jennings, co-author of Jennings and Marsh—the securities law textbook that so many law schools used in those days—asked me to serve as a guest lecturer each year when his class at Boalt reached Rule 144 on the class agenda. (It was either Larry Sonsini or Mike Halloran, who had been star pupils of Dick’s at Boalt, or maybe Bruce Mann, who had brought me to Dick’s attention.) Dick also was the person who put Don Schwartz and Dave Ratner on to me when they were searching for a Rule 144 speaker for their big annual ALI-ABA one-week course in Securities Regulation (which is where I first met fellow speakers Harvey Pitt and Herb Wander).

### **The Birth of the Newsletter**

Having the front-line experience with Rule 144 and being in the forefront of the interpretations, as well as being the key speaker on Rule 144 at various PLI, ALI-ABA and other conferences, I started to write a practical book about Rule 144. I quickly found that I would no sooner get done with a chapter than I would be faced with rewriting it to account for new interpretations. That is when it dawned on me that a newsletter would be more practical. That way, I would be able to keep readers abreast of the very latest interpretive positions—and their practical ramifications.

During the summer of 1975, I started planning for my first issue—which would be devoted to year-end gifts of restricted and control stock—a topic that I knew would have broad interest. I planned to do a mailing with a complimentary copy of the issue, and then wait for the orders to come in.

Fortunately, my Dean Witter friends and contacts helped me. First, the firm gave me permission to do the book/newsletter on my own “as long as I did not give the firm any credit” (*i.e.*, due to concern over potential liability). The head of the printing department, John Borden, introduced me to an outside printer who would print the issue and didn’t ask for any money up front. They just billed me. I felt that by the time the bill came, I would have enough subscriptions to pay the printer.

John also led me to my first typesetter, Judy, who helped me select fonts and designed our Executive Press logo. John also introduced me to Nona Ranjo, who has been our typesetter for the past 30 years. Her husband Ernie has been helping us with printing jobs all these years, in addition to the big outside printers that we have been using. Nona has been a god-send, typesetting issues into the night and over countless weekends and holidays—and always thanking us for the business, no matter how demanding we have been at times.

## Getting Out Our First Issue

I began writing the first issue in September 1975 and refined it in October. I was planning to mail it in late October, in time for year-end gift giving season. Mike Gettelman, who had been my friend since we were at the SEC together and had graduated from Harvard Law School two years ahead of me, helped me edit it. Mike (whose mentor at Harvard was the great Louis Loss) had moved to San Francisco to join Farella Braun & Martel two years before we moved. (More on the hours Mike and I would spend into the night editing each and every issue in Part 2). Mike is still fathering our baby to this day. Our first issue was four pages long and packed with important practical guidance and preventive procedures on the application of Rule 144 to gifted stock.

At the same time, I was able to obtain a free mailing list from Don Glasser and another list from a relative of a Dean Witter broker. What I didn't appreciate until I went to the mailing house with all my lists was that to qualify for bulk mailing rates and save considerable postage, the list had to be in zip code order. All I had were peel-on labels in alphabetical order. For the next two weeks, our living room floor was covered with envelopes as my wife and I, on our hands and knees, went scooting about sorting a few thousand envelopes (mostly at night and on weekends, while keeping our then six-year old daughter, Stephanie and four-year old son, Aaron, interested in the project and not running through the living room disrupting our piles by letting them place the stamps and the labels on all the envelopes).

Some businesses started in garages. Ours started in the living room on Queens Road in Berkeley. I remember the excitement and trepidation when the first mailing went out. I would develop a nervous habit of biting my mustache every time we did a promotional mailing, hoping that the costs of printing and postage would be covered by the subscriptions that would come in. It was a big deal in those days to risk \$5,000 or \$10,000 on a mailing when we were living from paycheck-to-paycheck and I did not have more than a thousand dollars to my name.

Fortunately, the first mailing paid for itself—barely. In fact, at the end of our first year—with only around 100 subscribers—I remember having a conversation with Mike Gettelman during which I was seriously questioning whether we should continue. Mike's reaction was "how could I question it?" We were making a real contribution and were a critical success even if we weren't making any profit.

## Potential Acquirers

Wanting to make a bigger splash financially and to reach a broader audience, I had discussions with CCH about acquiring the newsletter. CCH was very interested but said that I would need to make it a monthly newsletter. People would not remember a newsletter that only came out six times a year—they would not renew. My response was: "I can't afford to take the time to write a monthly issue as I have a full-time job. But watch me. People will remember something that is of true value to them."

I also offered to sell the newsletter to Dean Witter. Fortunately—in hindsight—they did not see any value in it to them and were still concerned about liability. At the time, I was greatly disappointed. Now, when suitors approach me, I reflect on the satisfaction of making a contribution and being in a position to influence responsible practices, while providing the best possible practical guidance. Why would I want to give that up—at any price?

## Help from Those Out There

In those early days, there were people out there who by word of mouth helped boost us and increase our readership. Lawyers representing sellers and issuers that I had provided practical guidance in my capacity of clearing all the Rule 144 transactions, like John Olson, a young partner at Gibson Dunn & Crutcher in Los Angeles, who was praising the newsletter early on to clients. My friends at Pillsbury who also provided a young associate who did our first indexes for the newsletter. My friends in Chicago, led by Herb Wander, who were supportive in many ways, including convincing the local bar that we were not practicing law without a license and that what we were doing was actually a service to the community, like CCH and BNA.

There were also colleagues like Stan Keller, Ed Fleischman, Carl Schneider, Keith Higgins, Alan Kailer, Ron Mueller and, of course, Peter Romeo and Alan Dye who made invaluable substantive contributions.

## “What Does Your Daddy Do?”

After our first mailing, I would walk to the post office every day during my lunch break to get the mail. On the weekends, I would drive in with my two young children and have them open the envelopes for me while we drove home across the Bay Bridge. During the early years, I was also fortunate to get some newspaper coverage, including an article in the *New York Times* that offered a free copy of one of our issues. When I went to the mail box the week following the article, my post office box was empty. When I asked the attendant to check to see what happened to my mail, he came back with two huge canvas mail sacks full of requests—some of which ended up becoming long-term subscribers.

One day my wife reported to me that the teacher had asked each of the kids in class to say what their parents did. Our child’s response: “My daddy goes to the post office every day and get checks in the mail.”

## Our Work and Growth Over the Years (Part 2 Coming)

(To be continued with our next issue. Meanwhile, please don’t forget to save the date and join us on September 20 in Chicago for our “35th Anniversary Gala”. John Olson, Herb Wander and Stan Keller are Co-Chairs of the “35th Gala Hosting Committee.” For more information, see a list of long-time readers and to share anecdotes, please go to the [“35th Anniversary Portal”](#) at [TheCorporateCounsel.net](http://TheCorporateCounsel.net).)

—J.M.B.

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*The Corporate Counsel* is published bi-monthly by Executive Press, Inc., P.O. Box 3895, San Francisco, CA 94119. Subscription is \$795 per year. This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

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