

Focus On New England – Legal Service Providers

Managing Intelligence And Security In The Face Of Today's Economic And Cultural Challenges

The Editor interviews **Christopher T. Marquet**, Executive Managing Director and Principal, Citigate Global Intelligence & Security (CGIS). He can be reached at chris.marquet@citigategis.com or (617) 733-3304.

Editor: What characteristics of New England's economy and culture are having the greatest impact on intelligence and security issues?

Marquet: Like the global economy, the business climate in New England has been rocky for the past two and one-half years. Disgruntled employees are doing things that they would not necessarily have done at a time when they had more job security. An extreme example occurred two years ago in Wakefield, Massachusetts, where a disgruntled employee shot seven people.

New England has a significant financial institution base with a particular expertise in private equity transactions. This sector's focus is now on consolidation. Exercising due diligence in the companies' reorganizations, a number of fraud and other problems are appearing. Many of these problems are caused as employees react to downsizing.

The area's bio-tech and other high-tech industries are also feeling a lot of pain. This has led to disputes and litigation involving theft of trade secrets and other intellectual property.

Similar to other major metropolitan areas of the country, New England remains concerned about terrorism. Logan Airport was the originating airfield for the two aircraft involved in the 9/11 attacks on the World Trade Center and the Pentagon. Some of the 9/11 terrorists entered the country through Maine. It is critical that New England businesses take an integrated strategic approach to securing their assets, and corporate counsel can lead the way to affect positive change.

Editor: Do you see security issues being handled differently in the U.S. than in other countries?

Marquet: The United Kingdom, Israel and many other countries have more experience than the U.S. with local terrorism and have had to adapt. For example, the IRA bombings forced the UK to modify its way of dealing with security. Israel, of course, has had to deal with near daily occurrences. In South America, kidnapping of corporate executives has been a long-time problem. As a result, foreign companies have taken a more pro-active role with security. Nevertheless, multinationals of all nations have had to deal with political risk. In Indonesia, political instability has required security issues to be part of corporate planning for a number of years for many companies. Generally speaking, the risk to overseas branches of American companies is greater than at home offices and these operations and personnel should be at least as prepared for emergencies as their domestic headquarters.

Editor: How has the Sarbanes-Oxley Act impacted companies' investigations of potential or alleged wrong doing?

Marquet: As we read the newspapers, we see a major spate of financial scandals. It's really nothing new. These things go in cycles. The Sarbanes-Oxley Act will hopefully shed more light on the process and make management more accountable, which is good. The Act gives a framework for considering whether investigations should continue to be performed by the traditional



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accounting firms that conducted them in the past. As an alternative, an organization, independent of ongoing company audits, can cleanly come in and advise internal audit functions, corporate counsel, compliance and boards of directors with an objective investigation. Accounting firms have conflicts of interest. An independent investigator does not. The Act is about transparency and clarity of the accounting function. A company has to have the ability for incidents to be reported directly to an independent audit committee or the board of directors. The incidents must be investigated independently and quickly.

A company should test its internal controls. How tight are they? Are there any reporting lines that need to be restructured? How independent is the board? Should new board members be brought on? How deeply should they be scrutinized?

Companies should maintain an independent hot line for whistleblowers. This is something that the Act requires.

Editor: How can an investigator help companies address intelligence and security issues in today's challenging environment?

Marquet: A professional investigator helps companies gather business intelligence, conduct corporate investigations, implement business controls and maintain security. Gathering intelligence does not involve dumpster digging. Rather, it is controlled within a strong legal and regulatory framework, including privacy laws, the Fair Credit Reporting Act, and Economic Espionage Act. In addition, conformance with high ethical standards, including conducting conflicts of interest checks, is of utmost importance.

Editor: How does a business intelligence consultant help companies look at investment opportunities?

Marquet: Business or "strategic intelligence" consultants provide timely, actionable intelligence and analysis to the CEO's, division heads, strategic planners and M&A people who are working a deal. It may involve acquisition due diligence, competitive analysis, market analysis, and strategic positioning for companies. The data the consultant provides includes intelligence about the capabilities, operating and financial position, and management strengths and weaknesses of potential distributors, joint venture partners, and merger and acquisition candidates. This goes beyond financial and legal due diligence. A good BI consultant

provides intelligence and perspective about management style, past successes and failures and corporate culture. The bottom line is to help ensure that the company is making sound, wise investments.

Editor: How does a business intelligence analyst help companies to protect their competitive position?

Marquet: Uncovering and analyzing strategically important competitor information and developing response tactics can be decisive in a fast-moving marketplace. This includes understanding what competitors are doing strategically around the world, but also identifying and assessing the impact of likely competitors, new technologies, new products, customers and other stakeholders within specific geographic or product markets.

Separately, investigators and security consultants can help a company to measure the effectiveness of its internal controls, including network and security systems. The data gathered can help identify whether a competitor or other third party has compromised the company's intellectual property and provides a basis to devise remedial action. Regular monitoring of competitors helps identify potential infringements of patents and other intellectual property.

Editor: Please give us examples of situations in which investigators collaborate with counsel.

Marquet: The most common is a fraud situation where counsel calls upon a skilled financial investigator to identify and detail the fact pattern. Using forensic accounting and other financial investigation skills, the money trail is followed and documented. These specialized investigators can then testify to a fact pattern of what happened under a particular set of circumstances.

A good investigation not only identifies the source of the problems, but also can help patch things up so that the problems do not happen again. In employee misconduct cases, what is required is a fast, objective investigation, and the matter must either be put to rest or some action taken. This is required, not only because a company wants to do the right thing, but also because it provides an affirmative legal defense.

Editor: How does computer forensics support an investigation?

Marquet: Gathering electronic evidence is a relatively new specialized investigative area. In employee misconduct cases and in many litigation settings, hard drives need to be examined for specific evidence, helpful or otherwise, such as hidden or deleted files. E-mail traffic needs to be examined and any that might be inappropriate needs to be documented.

Cases requiring computer forensics can involve everything from investigating fraud, theft of intellectual property, harassment, threats of violence and other situations where an employee is accused of wrongdoing. It may be something as simple as abuse of the company's computer use policy. Or, it may be an employee who downloaded proprietary company files and then zipped them into an e-mail sent to his or her home e-mail account. If the employee then leaves the company and goes to work for a competitor, an investigator may be asked to prove that intellectual property theft has occurred. In seven out of eight cases, the evidence is in the computer. It is, therefore, almost always helpful to go through the computer forensics process.

Editor: What risks does a business controls consultant help corporate counsel to address?

Marquet: Companies should put in place practical controls and security policies, procedures and functions that protect against a broad array of risks. Some of the obvious risks come from disgruntled employees. Because up to half of the fraud cases also involve vendors, internal controls in the purchasing department are essential. Controls to limit fraud include training so that internal auditors and other managers can spot patterns that should trigger an investigation.

Fraud prevention does not require the extensive controls that you'd see at Fort Knox. You need to be sensible. To ensure that the solution is practical for the company, the culture of the organization needs to be taken into consideration. For example, a university in New Haven may be different from a bio-tech company in Cambridge or a financial institution in Providence. They all have different cultures, and those cultures must be taken into account to make sure that the solutions are sensible. There is always a trade off between implementing air tight controls and security procedures and making sure that people can continue to do their day to day jobs efficiently.

Editor: What steps should be taken to help a company manage its risks effectively?

Marquet: Business controls and security consultants can help a company to conduct an appropriate vulnerability study to identify what threats face the particular organization. Vulnerabilities vary widely from company to company. They are influenced by geography, kind of business, character of the neighborhood, type of employees and nature of clients.

After assessing the risks, the company's policies and procedures should be examined and recommendations made that are consistent with the company's culture – as well as the industry's best practices. Maybe you are spending too much money on guards, which may add only negligible value to overall security. Putting some additional money into such things as technology, policies, procedures or training may be a lot more effective than just a few more guards. You have to have a strategic approach. It can't be just a tactical response here and there.

Controls can prevent some risks, but there are others that you can't control – like fires, floods and other acts of God. You have to be prepared whatever could go wrong. As well as having a crisis management plan in place, you need to test it. It does no good to have a plan sitting on the shelf gathering dust. If you have not done a table-top training exercise, the plan may not be workable. And, since people come and go, and risks shift in degrees, the plan has to be flexible and updated periodically.

Editor: How can an investigator help corporate counsel to stay ahead of the curve in managing intelligence and security issues?

Marquet: A good investigator can help corporate counsel in supporting programs to introduce and maintain risk control, protection, information gathering and analysis into their strategic process. With an integrated framework of effective intelligence and security, corporate counsel can help enhance their companies' shareholder and enterprise value.