

10 Legal Trends to Watch in 2021

Law Department Management



Good riddance, 2020. Hello, 2021! To start off this new year right, we've compiled a list of legal trends that every in-house counsel should watch. These 2021 trends present opportunities — and risks — for lawyers and their organizations. Below, we share how to capitalize on these trends for personal and professional fulfillment.

1. Convergence of business and law

Lawyers traditionally focus on legal matters requiring legal judgment. But our ACC in-house counsel community embraces business matters requiring legal judgment; legal matters requiring business judgment; and sometimes even business matters requiring business judgment.

In turbulent times, organizations value in-house counsel who are embedded in the business. For example, outside litigation counsel may dismiss settlement calculations as "a business decision" and hang up the phone. But for in-house counsel, the conversation is only beginning. We engage business stakeholders to vet settlements from operational and strategic perspectives, considering financial and human costs. Who is the more valued advisor?

Be more than just another lawyer. Profit from this crisis-driven convergence of business and law. For example, Carrie completed her online MBA degree in 2020. Andrew teaches at Georgetown University's business school and George Washington University's law school. Neither of us could be general counsel without the ability to speak business and frame law as business priorities.

2. The lawyer as continuous crisis manager

2020 lurched from crisis to crisis, and lawyers provided daily crisis management to their organizations. Is our business required to shut down? How do we take care of COVID-19 positive employees? Are we eligible for lifeline government loans and grants? When and how can employees return to the office? Lawyers evaluated new laws and regulations as they were written, and rewritten, and provided practical advice to their organizations.

2021 will solidify the lawyer’s role as continuous crisis manager. Pandemic risks and uncertainties will continue. A new US federal administration brings risks and opportunities with executive agency appointments, regulatory priorities, and enforcement actions. Effective lawyers will continuously monitor and gauge the business impact of new laws, regulations, and emerging best practices.

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3. Reconciling globalism vs. national interests

COVID-19 bashed open fractured national interests in a global economy. Countries closed borders, supply chains sputtered, export controls choked essential medical supplies, and governments are now scrabbling for scarce vaccines.

International in-house counsel already had a difficult job bridging legal, economic, and cultural differences across global organizations. COVID-19 will continue to make this job more difficult. Lawyers will need to interpret, comply, and reconcile conflicting national laws, while keeping their global organizations aligned as much as possible.

4. Vetting emerging solutions

Artificial intelligence (AI) and natural language processing (NLP) are creating applications delivering significant legal efficiency and value. Contract management, due diligence, electronic discovery, predictive litigation analytics, and transaction monitoring and screening all exemplify this trend.

AI/NLP vendors make glowing promises, and it is prudent to be skeptical before opening your organization’s wallet. But lawyers should monitor the evolving potential of AI/NLP applications to increase the value and decrease the cost of legal services.

5. Engaging the roots of protests and social unrest

For many of us, 2020 was marred by protests and social unrest. Our downtown Washington, DC, neighborhood had stores smashed; barricades behind military checkpoints; and mobs with knife fights in the streets. When people marched, sometimes we joined and raised our fists. Other times, we locked our doors.

We hope 2021 will be better. But the grievances and inequalities fueling the Black Lives Matter movement and political divides will continue to simmer.

What can in-house lawyers do? We have limited influence on broad social policy issues, but we can influence our own organization’s policies and principles. Commit to promote diversity, equity, and

inclusion. Strive to promote ethical and legal behavior. Help your organization model the change you want to see in the world.

6. Social media guidelines — Define your organization's culture

Protest and social unrest demand an outlet. Many individuals use social media to express their identity and affirm their beliefs, sometimes in contrast against others with different beliefs. In 2021, organizations will continue being challenged to take positions for and against social issues. Your organization's social media guidelines are a focal point for protest and social unrest.

Each organization has its own culture, and in-house counsel should proactively evaluate social media guidelines to reflect that culture. When your colleagues are speaking for the organization, can they make political statements? Or should they be required to stay silent? What, if any, restrictions, are appropriate for personal social media? For Facebook, LinkedIn, Instagram, Parler, or TikTok?

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Every organization will have different answers to these questions. In-house counsel should proactively engage internal and external stakeholders to consider these questions — before unintended reputational impacts.

7. Nurturing authentic remote relationships

We both started new general counsel jobs this year. We both had less than two weeks in-person in the office to meet our new colleagues.

Making friends can be hard in person, and making friends is harder through a laptop screen. Becoming a trusted legal advisor is harder still. But after the COVID pandemic recedes, many organizations will still have remote workforces more familiar with virtual video conference backgrounds than the office water cooler.

So how can lawyers build remote relationships? Show colleagues your whole self through personal one-on-one conversations before getting down to business. Be approachable and have fun through virtual happy hours, online games, and sharing safe-for-work GIFs in instant messages. Colleagues are more likely to seek and follow your counsel if they like you.

Of course, ACC offers superb channels to build remote relationships with peer in-house counsel. Frankly, ACC events have been our primary social life during this pandemic!

8. Delivering effective remote legal advice

In 2020, we have remotely appeared in court proceedings, closed complex financing transactions, and held board meetings. We miss high fives around the closing conference table, and striding into the courtroom with a heavy briefcase. However, this trend of remote transactional and litigation representation will persist into 2021, and beyond.

Remote lawyers face challenges in delivering real-time legal advice to their audience. You're not in

the same room, so it's harder to adjust your message to your audience's body language. You compete for your audience's attention with emails and text messages popping up on their screen.

Accordingly, lawyers need to purposefully and continuously engage their audience when providing remote legal advice. For example, we frequently stop during presentations to solicit feedback, live or in chat rooms, and tailor our approach to this feedback. In 2021, lawyers must hone their remote legal presence to deliver effective advice and advocacy for their clients. Clients are seeking remote legal advice, and lawyers should be prepared to respond in kind, embracing all communication channels — even resolving legal questions through emoji.?

9. Cultivating resilience and improvisation

Resilience is defined as "The capacity to recover quickly from difficulties."

Improvisation is defined as "Making something from what is available."

For us, resilience means "Being prepared for everything, including being prepared to improvise."

2020 was a crash course in resilience and improvisation, personally and professionally. Organizations scrambled to survive with available resources. Families like ours shifted to working and schooling at home.

In 2021, lawyers should learn 2020's lessons and proactively cultivate resilience for themselves and their organizations. For organizations, lawyers can put in place business continuity and disaster recovery plans, comprehensive insurance coverage, and lines of credit to access capital.

Personally, lawyers should honestly recognize the difficulties they are experiencing, and accept the limits of what they can do in the constraints of personal resources and relationships. Make action plans, but recognize even the best plans may fall apart. Work hard, but let go.

10. Be gentle with yourself

Being a lawyer is hard enough in good times — and horrible in hard times. 2020 was hard for everyone. We believe 2021 will be better. But healing, for everyone, will take time. We all want to be the best we can be, and capitalize on these 2021 legal trends to advance our personal and professional success. But be gentle with yourself and your expectations.

In 2020, we shared our family's perspective on surviving and thriving in a pandemic. We don't have all the answers. We just know we're all together in this crazy journey called life. It's OK to step off to the side of the road when life feels too crazy. To breathe, meditate, run around in a circle, and scribble down overflowing thoughts.

In 2021, and beyond, let's all remember to take time in our personal and professional journeys to care for our physical, intellectual, and emotional health.

Godspeed!

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