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# WHAT TIME HAS TAUGHT US

August 14, 2026 • Houston, Texas

## LOOK BACK

What drove the reform, the promise, and the early expectations.

## REALITY CHECK

What the evidence shows about outcomes, costs, and unintended effects.

## LOOK FORWARD

What it means for general counsel today and what may come next.

Gordon Arata

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# PRESENTERS

MODERATOR

**ADAM J. RUSS**
Partner,
Gordon Arata

**KATHRYN E. HAND**
Senior Legal Counsel
Enbridge

**VIVEK ARORA**
General Counsel, SAM
Chief Administrative
Officer

**GISELLE S. GUERRA**
Shell
(Former)

**GREG KUSEL**
Chief Counsel,
Legal Department,
Energy Transfer

2002

2010

2023

FUTURE

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# SOX (2002) & DODD-FRANK (2010)

## INTERNAL CONTROLS & COMPLIANCE

01

### THE HYPE

- Section 404 required annual internal-controls assessments, with outside-auditor attestation for larger filers.
- Section 302 added personal CEO/CFO certification.
- Dodd-Frank brought whistleblower bounties and fears that some business models would become unworkable.

**$2.3M**

average annual SOX compliance cost today (KPMG)

### THE REALITY

- No mass exodus from public markets materialized.
- SOX created a permanent internal-controls apparatus that became standard operating procedure.
- KPMG's 2025 SOX Survey: average program cost is $2.3M and 15,580 staff hours a year; in-scope systems doubled from 17 to 40 between FY22 and FY24.
- GAO: nonexempt companies pay about 19% more in audit fees than exempt peers.

2002 — 2010 — 2025 — FUTURE

# SOX (2002) & DODD-FRANK (2010)

## IMPACT ON GENERAL COUNSEL

This created the modern **in-house compliance** function as a distinct career track rather than an afterthought within the GC's office.

Compliance is now frequently its own department, sometimes **reporting directly to the board**, with its own budget, headcount, and technology stack.

Larger firms bear higher absolute costs, but smaller firms feel Section 404 compliance as a **proportionally heavier burden** on their budgets.

**19%** higher audit fees once companies lose the Section 404(b) exemption (GAO)

2002 — 2010 — 2025 — FUTURE

Key sources: KPMG 2025 SOX Survey • GAO-25-107500

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# ELECTRONICALLY STORED INFORMATION

## // ESI & E-DISCOVERY

### THE HYPE

- Businesses moved from paper records to massive volumes of email, texts, spreadsheets, and metadata.
- The promise: ESI would deliver more complete evidence because electronic records are rarely truly destroyed.

### THE REALITY

- Zubulake v. UBS Warburg (2003–05) built the foundational preservation framework.
- The case ended in a $29.2M jury verdict after UBS failed to preserve emails.
- FRCP amendments effective Dec. 1, 2006 formally defined ESI as discoverable and added a Rule 37 safe harbor.
- e-Discovery now runs through preservation, identification, collection, processing, review, and production.

**$29.2M**

Zubulake jury verdict after UBS lost key emails

2006 | 2006 | TODAY | FUTURE

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# ELECTRONICALLY STORED INFORMATION

## // ESI & E-DISCOVERY

**01** Establish a defensible process: holds must be written, distributed to every custodian, and enforced at the system level.

**02** Balance discovery cost against obligation using FRCP proportionality — Rule 26(b)(2)(B) protects information that isn't reasonably accessible due to undue burden or cost.

**03** Know the landmarks cold: *Zubulake*; FRCP 26 & 37; FRE 502. Technology competence is now a professional responsibility, not an optional skill.

**2006**

*year the FRCP amendments formally made ESI discoverable nationwide*

2003–2005 — 2006 — 2022 — TODAY — FUTURE



**Key sources:** ReedSmith Zubulake Retrospective • Electronic Discovery Law • RAND Corp.

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# FOREIGN CORRUPT PRACTICES ACT

## FCPA

03

### THE HYPE

- For nearly 20 years, the FCPA was viewed as one of the most aggressively enforced corporate compliance laws.
- Penalties climbed steadily through the 2000s and 2010s.
- Enforcement stayed robust even during Trump's first term, despite public criticism of the law.

### THE REALITY

- **Feb. 10, 2025:** most new FCPA investigations were paused for 180 days, but the law remained fully in effect.
- **June 9, 2025:** Deputy AG Blanche lifted the pause and prioritized cartels, TCOs, threats to U.S. economic interests, and individual accountability.
- **2025** was the lowest enforcement year on record since tracking began in 2010: 7 DOJ actions and zero new SEC cases.

**180 DAYS** | LENGTH OF THE 2025 FCPA ENFORCEMENT PAUSE

1977 — FEB. 2025 — June 2025 — FUTURE

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# FOREIGN CORRUPT PRACTICES ACT

## IMPACT ON GENERAL COUNSEL

- The statute **remains fully in force** — compliance obligations do not change with enforcement posture, and today's conduct can still be prosecuted by a future administration.
- **Recalibrate risk assessments** around individual accountability and conduct tied to cartels, TCOs, national security, or significant U.S. economic harm.
- DOJ has said it will **enforce the FCPA** against U.S.-based companies too where conduct undermines U.S. interests — monitor priorities closely because they can shift again without Congress changing the law.

**7**

**DOJ FCPA ACTIONS IN 2025 —**
the lowest since formal tracking began in 2010.

1977 — 2025 — 2026 — FUTURE

**KEY SOURCES:** WilmerHale FCPA Year-in-Review 2025 • Jenner & Block • DLA Piper

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# 04 ALTERNATIVE FEE ARRANGEMENTS

## AFAS

### THE HYPE

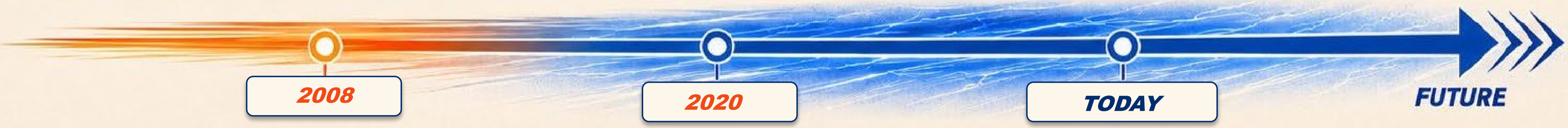
- For more than two decades, AFAs were predicted to replace the billable hour.
- Each disruption — the 2008 crisis, legal process outsourcing, and now GenAI — renewed the expectation.
- The belief: clients would demand predictable, value-based pricing as AI reshapes legal work.

### THE REALITY

- AFAs have remained stubbornly stagnant at about 15–25% of billings in sophisticated law departments.
- 72% of firms now offer some form of AFA, but only about one-third use them for a meaningful share of matters.
- Despite heavy AI investment, 90% of legal dollars still flow through traditional hourly billing.

**90%**

of legal spend still billed hourly, despite heavy AI investment



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# ALTERNATIVE FEE ARRANGEMENTS

## IMPACT ON GENERAL COUNSEL

### AFAS

**Be pragmatic, not one-size-fits-all:** AFAs work best for predictable-scope, high-volume work (e.g., IP filings); hourly billing remains appropriate for complex, high-risk matters.

**Use this moment as leverage** — with demand growth softening and net spend anticipation among GCs at pandemic-era lows, corporate legal has an unusual opening to negotiate multi-year rate commitments.

**Focus on matching the pricing model** to the engagement, not on waiting for the billable hour to disappear on its own.

**72%**

**of firms now offer some form of AFA — but only ~1/3 use them meaningfully**

2008 — 2020 — TODAY — FUTURE

**KEY SOURCES:** Thomson Reuters Institute • Best Law Firms Survey

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# 05 ENVIRONMENTAL, SOCIAL & GOVERNANCE

## ESG

### THE HYPE

- ESG became a major corporate priority, expected to integrate into core business strategy and drive stronger financial performance and reputation.
- The SEC's March 2024 climate-disclosure rules — emissions, climate risk, severe-weather financial impacts — were expected to be a durable, binding federal mandate.

### THE REALITY

- The rules were stayed by the Fifth Circuit within days of adoption and never took effect; the SEC ended its own defense of them in March 2025.
- May 29, 2026: the SEC formally proposed rescinding the rules entirely, with Chairman Atkins saying disclosure should be "guided by materiality as the North Star" and avoid dictating corporate behavior.
- Gibson Dunn: the proposal cites costs to public companies the Commission views as unjustified by the informational benefit to investors.

**9 Days**

from adoption to the Fifth Circuit's stay of the SEC's climate rules, March 2024

2010s — 2025 — TODAY — FUTURE

**KEY SOURCES:** SEC Newsroom · Gibson Dunn · Husch Blackwell

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# ENVIRONMENTAL, SOCIAL & GOVERNANCE

## ESG — IMPACT ON GENERAL COUNSEL

- Help the company **comply with evolving ESG law** while tracking whether the federal disclosure landscape actually narrows if the rescission is finalized.
- **Coordinate** with state regulators too — 18 states and D.C. intervened to defend the SEC's climate rules even after the agency stepped back.
- **Prioritize compliance** with whatever ESG regulation remains applicable, regardless of the company's broader ESG strategy or the federal political mood.

**18 States**
plus D.C. intervened to defend the SEC's climate rules after the agency stepped back

2010s → 2025 → TODAY → FUTURE

**KEY SOURCES:** SEC Newsroom • Gibson Dunn • Husch Blackwell

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# 06 BLOCKCHAIN

## THE HYPE

- Blockchain was promoted as a technology that would revolutionize business, finance, and legal work through smart contracts and immutable recordkeeping.
- Many predicted cryptocurrencies would replace traditional currencies and reduce the role of banks entirely.

## THE REALITY

- Adoption is real but concentrated: Gartner projects 25% of Global 2000 firms running blockchain in production by 2026, up from just 11% in 2024.
- Financial services and supply chain together account for roughly 60% of live deployments — concentrated in back-office settlement systems and trade finance, not headline use cases.
- Real limitations remain: incorrect on-chain data is difficult to correct, smart-contract governance is legally uncertain across jurisdictions, and integration requires custom middleware to talk to legacy systems.

**25%**

of Global 2000 firms running blockchain in production by 2026

2010s — 2022 — TODAY — FUTURE

**KEY SOURCES:** BDS, “Enterprise Blockchain Adoption in 2026”

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# BLOCKCHAIN

## IMPACT ON GENERAL COUNSEL

**Develop a working understanding** of blockchain even if your organization isn't using it yet — and evaluate legal risk across cybersecurity, smart-contract enforceability, and cross-border regulation.

**Push back on technology-first projects** that produce impressive demos but weak ROI; require independent security audits on any smart contract handling real assets before launch.

**Focus on identifying practical, well-defined use cases** rather than expecting blockchain to transform every legal function at once.

**60%**

**of live blockchain deployments concentrated in financial services & supply chain**

2010s — 2022 — TODAY — FUTURE

**KEY SOURCE** BDS, "Enterprise Blockchain Adoption in 2026"

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# 07 CHILD ONLINE PROTECTION ACT

## COPA

### THE HYPE

- Enacted in 1998 one year after the Communications Decency Act was struck down, COPA was pitched as a narrower, court-proof fix with real teeth: up to a $50,000 fine and 6 months in prison per violation.
- The expectation: age-verification gates would become a standard, enforceable feature of the commercial internet almost overnight.

### THE REALITY

- COPA never took effect for a single day of its 11-year existence — the Third Circuit permanently enjoined it in 2008, and the Supreme Court declined the government's final appeal in January 2009.
- In 2004, the Supreme Court itself found the government had failed to show COPA was the least restrictive way to protect minors, given that content filtering was already available.
- Nearly two decades later, Free Speech Coalition v. Paxton (June 2025, 6–3) upheld a much narrower Texas age-verification law, applying intermediate — not strict — scrutiny because the burden on adults was only incidental.

**11 Years**

**COPA existed without ever taking effect for a single day**

1998 — 2004 — 2025 — FUTURE

**KEY SOURCES:** U.S. v. American Library Ass'n (3d Cir. 2008) • Ashcroft v. ACLU, 542 U.S. 656 (2004) • Free Speech Coalition v. Paxton, 606 U.S. 695 (2025)

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# CHILD ONLINE PROTECTION ACT

## IMPACT ON GENERAL COUNSEL

## COPA

**Age verification** is now a live compliance obligation, not a hypothetical: assume state statutes modeled on the Texas law are enforceable and expanding.

Legal scholars see Paxton's reasoning as **tightly cabined** to sexual content and unlikely to extend to other categories — don't over-read it into other content-regulation contexts.

Don't assume a law is toothless because an earlier version wasn't: **the two-decade gap** between COPA's death and Paxton's survival is itself the lesson for any new content or privacy statute.

**20+ States**

already had comparable age-verification laws on the books by the time Paxton was decided

1998 — 2004 — 2025 — FUTURE

**KEY SOURCES:** Harvard L. Rev. • Cornell LII • CRS Legal Sidebar LSB11354

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# METAVERSE & VR PROPERTY RIGHTS

## THE HYPE

- Facebook's 2021 Meta rebrand framed the metaverse as "the successor to the mobile internet."
- Virtual land prices rose as much as 500% after the announcement.
- Republic Realm's $4.3M Sandbox purchase became the benchmark virtual-property sale.

## THE REALITY

- *By 2024, average metaverse land prices had fallen roughly 72% from their highs.*
- *Meta's Reality Labs reported a $19.2B operating loss for 2025 (on $2.2B in revenue).*
- *Meta's Horizon Workrooms shut down on February 16, 2026.*
- *Ninth Circuit: NFTs are "goods" under the Lanham Act;  token ownership does not automatically transfer IP rights.*

2021 · 2024 · 2025 · FUTURE

**KEY SOURCES:** *CoinGecko Research • SEC Form 10-K (Meta) • USPTO/Copyright Office • 9th Cir.*

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# METAVERSE & VR PROPERTY RIGHTS

DIGITAL ASSETS

## IMPACT ON GENERAL COUNSEL

Treat virtual land, NFTs, and in-world assets as ***licensed contractual rights***, not real property — the underlying license terms are the actual source of any rights.

***Impairment risk is real*** for anyone still holding metaverse assets from the 2021–22 boom: a markdown of ***70–95%*** from acquisition cost is now the norm, not the exception, and should be reflected on the balance sheet.

***Advise clients*** to build explicit IP, commercialization, and dispute-resolution terms into any NFT offering — ***don't wait*** for legislatures to create a '*digital property law*' that courts aren't using anyway.

**70–95%**

***typical markdown from acquisition cost now seen on 2021–22-era metaverse assets***

2021
2024
2025
FUTURE

**KEY SOURCES:** CoinGecko Research • SEC Form 10-K (Meta) • USPTO/Copyright Office • 9th Cir.

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CLOSING THOUGHT

# HYPE MOVES FAST. LAW MOVES IN CYCLES.

## WHAT TIME HAS TAUGHT US

> Your future hasn't been written yet. No one's has. Your future is whatever you make it, so make it a good one.
>
> — Dr. Emmett Brown, Back to the Future Part III (1990)

**LOOK BACK** What we expected

**REALITY CHECK** What actually happened

**LOOK FORWARD** What it means next

»» **DISCUSSION**

2002 — 2010 — 2023 — FUTURE

**QUOTE SOURCE:** *Back to the Future Part III (1990)*