BY DAVID HECHLER

Night at The Museum

After corporate governance horrors came to life, the Getty's GC threw himself into reform.

LONG BEFORE THE J. PAUL GETTY TRUST MADE headlines for its CEO's wheeling and dealing, there were early warning signs. Barry Munitz, the institution's high-profile chief executive, acted as if the Getty's staff were there to serve his personal needs. Munitz reportedly had his underlings at the institution, the nation's largest philanthropy dedicated to the visual arts, mail him umbrellas when he traveled, and track down special blood orange juice for his wife. Staffers were even dispatched to pick up videos that Munitz planned to watch.

Getty general counsel Peter Erichsen was disturbed by Munitz's actions, and insisted that his boss calculate the value of these services and declare them as taxable income. But "Dr. Munitz was not pleased" by Erichsen's intervention, says John Biggs, who recalls the 2003 encounter between the two. "There was never any overt retaliation," adds Biggs, who was the Getty's chairman at the time. "But there was covert hostility. Body language." (Munitz declined to be interviewed for this story.)

There's been a lot more than hostile body language at the Getty since then. Its troubles began in late 2004, when the *Los Angeles Times* started publishing a series of investigative stories that raised questions about the trust's corporate governance policies, as well as Munitz's high salary and lavish expenses. The following year the California attorney general's office launched an investigation into these matters, and the Los Angeles–based institution hired a law firm to conduct an exhaustive probe. If this weren't bad enough, Italy and Greece, which had been scrutinizing the trust's acquisition of ancient art, demanded the return of Getty antiquities that they claimed were looted [see "No Roman Holiday," page 93].

Erichsen isn't the only general counsel of a nonprofit who has grappled with governance issues. The Nature Conservancy, the Museum of Modern Art, the Smithsonian Institution—all have had problems in recent years. Their woes followed the huge corporate scandals earlier in the decade. Yet, in both the nonprofit and for-profit sectors, the issues were often the same: Powerful executives played fast and loose with the institutional assets, while trustees they'd recruited themselves smiled and nodded.

But among nonprofit scandals, the Getty's stood out. The attorney general's probe led to the appointment of a monitor, apparently the first time one has been named to oversee a nonprofit organization. And the museum's scandals brought international embarrassment to an institution with a formerly world-class reputation.

Since then the Getty has embraced reform with the fervor of a convert. And GC Erichsen—who recently returned to private practice—played a key role in helping the institution become a leader in corporate governance. He didn't wait for the regulators to come calling, for example. Soon after the Getty's troubles first emerged in 2004, he contacted the office of then–state attorney general Bill Lockyer, and volunteered the museum's full cooperation with any probe. And he guided the institution as it thoroughly overhauled its corporate governance policies and adopted new rules in April 2006—a full six months before Lockyer released his report.

DAVID STRICK

Peter Erichsen says he responded to questions about his loyalty by resolving to serve the institution, not the CEO.

These proactive measures were the right thing to do and the smart thing, says Erichsen. They were right because

One of Erichsen's early tasks was to deal with local lawsuits spurred by the institution's new Getty Villa (above, which houses antiquities).

KAYTE DEIOMA/NEWSCOM (TOP); ROBYN BECK/GETTY IMAGES (INSET)

the Getty *was* in need of governance reform, and smart because they turned the AG's iron fist into a velvet glove. In the end, Lockyer took no enforcement action against Munitz, who resigned in February 2006, or the Getty. Nor did the AG require the museum to pay any penalties. And even though he appointed a monitor, Lockyer went easy on the trust. Monitors in the for-profit world sometimes wield great power in corporate boardrooms. The Getty's, by contrast, functions as an adviser, with limited tenure. If all goes well, his appointment will end early next year.

"Everyone may be entitled to their own loyalty," says Peter Erichsen, but not "to their own facts."

The Getty's experience is "a wonderful example of two things," says Michael Peregrine, a partner at McDermott Will & Emery in Chicago, who specializes in nonprofit corporate governance (but doesn't advise the Getty). When clients say, "It can't happen to us," he points to the trust. "It's also a great example of how to respond to a problem and fix it," he adds.

A CORPORATE GOVERNANCE scandal was the last thing on Erichsen's mind when he took over as GC in 2001. He knew there was litigation involving the Getty Villa, a facility that houses antiquities on a bluff overlooking Malibu, about a dozen miles from the main Getty campus. Homeowners in that posh neighborhood had sued to contain the scope of the project. Still, Erichsen wasn't worried; handling disputes was part of his job. "I'm a lawyer," he says. "It's something I've dealt with my whole professional life." He pauses, then adds with characteristic humor: "It turned out to be a little more challenging than I had expected."

Erichsen, now 51, had reason to feel confident. Following Harvard College and Harvard Law School, he spent a dozen years at Ropes & Gray in Boston, the last three as a partner in the corporate, securities, and venture capital fields. A two-year stint as a deputy assistant attorney general in the U.S. Department of Justice followed, then another two as associate counsel to the president in the Clinton White House. In 1997 he left Washington to become general counsel at the University of Pennsylvania, where his responsibilities included overseeing the school's four-hospital health system. He dealt with some tricky issues there, such as Medicare fraud and the death of a man in a gene therapy clinical trial. But they were nothing like the challenges at the Getty, which he calls his own personal *Night at the Museum*.

Much as he liked the job at Penn, Erichsen had always had a hankering to live in California. He noticed an ad for the Getty job, and before he had time to check it out, a headhunter cold-called about the position. "Not having moved to California yet," he says, "I wasn't a believer in karma."

The Getty was a smaller shop than Penn, but had an entrepreneurial spirit that appealed to Erichsen. When J. Paul Getty died in 1976, he left $700 million to the relatively small museum he'd established, with broad instructions to use it to promote the arts. Thirty-one years later, in addition to the museum, the Getty Trust is home to research, conservation, and grant programs—all based at the Getty Center in Brentwood. The endowment has swelled to $6 billion, with an annual budget of around $250 million.

THE FAULT LINES at the trust were exposed in October 2004, when director Deborah Gribbon resigned. A longtime employee who had risen to the directorship in 2000, Gribbon cited irreconcilable differences with Munitz. Two months later, things got worse when the *Times* accused the Getty of selling a parcel of land at a below-market price to billionaire Eli Broad, Munitz's friend and sometime business associate. The paper also said that Munitz and other board members had taken trips with Broad on his yacht, after which the Getty had reimbursed Broad for "business" expenses. Munitz claimed he'd recused himself from participating in the land sale, and that the expenses cited were legitimate. (The former CEO is now an English professor at California State University, Los Angeles.) The *Times* also described lavish trips that Munitz took, often with his wife. They traveled first-class, stayed at luxury hotels, and dined at fancy restaurants—and the trust paid for both of them.

At the time, Munitz defended his actions as proper and approved by the board. But in July 2005, a month after the story on Munitz was published, AG Lockyer began his formal investigation. In his report, he cited the *Times*'s articles as the basis for his probe.

Two months later—nine months after questions were first raised about the land sale to Broad—a special committee of the Getty's board hired Munger, Tolles & Olson to investigate.

When the questions about the deal first surfaced, Erichsen says he scrambled to check out the facts. But as the articles and the allegations mounted, so did the work. In each successive story the *Times* seemed to have more documents to quote from, and the lawyers had a longer list of items to track down. In time the sheer volume overwhelmed the Getty's four-lawyer department. More important, Erichsen knew he couldn't be the board's sole adviser when allegations implicated his own boss, he says. The conflict was untenable, he adds, and he encouraged the board to bring on an outside firm—which it did when it hired Munger, Tolles.

In retrospect, the important question is: What took so long to launch a formal internal investigation? At least two factors came into play. The first allegation involved an improper land sale, but when Erichsen and his colleagues dug into the facts, they concluded that the charge was baseless. The Getty, they decided, had received "good value" for the property. (In his report, the AG agreed.) This conclusion had a lulling effect, Erichsen told an American Law Institute–American Bar Association conference in March. It convinced Getty officials that there was nothing wrong at the institution. "And that could not have been less true," he told the audience.

What's more, the board was reluc-

ALESSANDRO BIANCHI/LANDOV (TRUE); CHRIS HELGREN/LANDOV

No Roman Holiday

Former Getty curator Marion True arrives at a Roman court.

ALONG WITH ITS CORPORATE GOVERNANCE WOES, THE Getty has faced other troubles over the last few years—questions about the provenance of some of its antiquities and about the rigor of its acquisition policies.

At the center of this issue is a long-running fight with Italy and Greece; both demanded that the Getty return antiquities they claimed had been looted from them. In August, following years of negotiations periodically interrupted by harsh words fired back and forth in the press, the Getty announced that it would return 40 artifacts to Italy. Last December it agreed to return two disputed treasures to Greece. (Other museums, including New York's Metropolitan Museum of Art and Boston's Museum of Fine Art, have also returned art to the Italians.)

Spurred by the controversy, the Getty also looked into the broader question of whether its acquisition policies were strict enough. If antiquities aren't legally obtained and properly imported, current international law says that they should be returned to the country of origin. At the Getty, oversight over provenance was too lax, according to former chairman John Biggs. "Obviously trustee and leadership decisions had been made to collect items that had very questionable provenance," he acknowledges.

In October 2006 the Getty board adopted a new rule that says the museum will only purchase artifacts that it can document were legally imported by November 1970—the date on which a UNESCO convention established strict rules. The Getty was the first U.S. art museum to adopt these guidelines, according to ex–GC Peter Erichsen, who calls them "the gold standard."

Erichsen credits Getty museum director Michael Brand with taking the lead in advocating the revision. Previously, the trust required only that objects be acquired from "established, well-documented collections" mentioned in an art publication before 1995.

An Italian policeman stands guard over one of the objects that the Getty returned to Italy.

But the artifacts scandal isn't completely over. The Getty's former curator, Marion True, is still on trial in Rome—a trial that began in November 2005—charged with criminal conspiracy to obtain looted artifacts. True purchased the antiquities at issue (which the Getty agreed to return in its settlement with Italy) in the 1990s. She resigned from the Getty shortly before her trial, though the trust continues to pay her legal bills. The court in Rome is often in session once a month, then goes on hiatus for months at a time. Yet, even after the Getty settled with Italy, prosecutors refused to drop the charges against True. —D.H.

Lori Fox, now the Getty's acting GC, helped overhaul the museum's governance policies.

tant to move precipitately. The trustees thought long and hard before hiring Munger, Tolles, says Biggs, the board chairman (and former CEO/chairman of TIAA–CREF, the giant teachers' investment fund). "Once you bring in an outside investigator, you create a totally different atmosphere," notes Biggs, now 71. "Everyone in the institution is thinking about [the investigation], not what exhibits we can bring in."

Several trustees knew Munger, Tolles partner Ronald Olson, and the board gave the firm free rein to pursue all allegations. The Munger lawyers spent five months interviewing dozens of employees, reviewing reams of documents, advising the Getty, and sharing their findings with the attorney general's office. (The firm continues to work with the trust, and played a major role in antiquities negotiations.)

All the investigating created tension on the Getty campus, and, perhaps inevitably, set in motion a collision between the CEO and his general counsel. In some ways it was a clash not just of their roles, but of their styles. Munitz is an extrovert who wears bright clothing and enjoys stepping into the limelight with his prominent friends. He was chancellor of the California State University system before taking the Getty job in 1998, and was chosen as CEO in part because the Getty sought to raise its profile. Erichsen, by contrast, dresses conservatively and punctures any tendency toward self-importance with self-deprecating humor. He would gladly trade a glittery L.A. party for a good book.

The clash between the two came to a head in December 2005. Erichsen declined to discuss privileged advice he gave clients, but Biggs remembers the situation well. Munger, Tolles was spending increasingly more time questioning Munitz—much to his dismay. By this point the CEO was no longer speaking to his GC, so Munitz appealed to Biggs to call off his inquisitors. The CEO thought the law firm's questions were "inappropriate" and "excessive." (Munger's Olson says that he never heard this, but that Munitz was generally "cooperative.") When the chairman relayed the CEO's message to Erichsen, the normally cool lawyer snapped: "How am I supposed to deal with this?"

DAVID STRICK (FOX); LAWRENCE K. HO/NEWSCOM (GRIBBON); JOHN M. HELLER/GETTY IMAGES

Another source of friction between the GC and CEO was the Getty's strategy for responding to the press. Erichsen says that many stories alleged things that he knew nothing about. The GC says his inclination was to investigate first and then, if prudent, respond to press inquiries. Munitz's impulse was quite different, Biggs says. The CEO was the one most often criticized in print, and he wanted to respond. "Barry tended to be fairly dramatic in his statements," Biggs says. He would make assertions to the press such as: "I absolutely had nothing to do with that transaction." They were, Biggs says, "too extreme." Erichsen, he adds, "thought that Barry was being careless and glossing over serious questions."

There were times when, in the throes of these disagreements, Erichsen feared he might be fired. "My perception was that my loyalty was in question," he says carefully. And in truth, he adds, it wasn't always easy to know to whom he owed it—the board, the CEO, or the outside investigators? "It's just inherent in the process that you're going to feel conflicting loyalties," he says. The GC resolved them by focusing on his duty to the institution and tenaciously pursuing the facts. "Everyone may be entitled to their own loyalty," he concludes, "but everyone isn't entitled to their own facts."

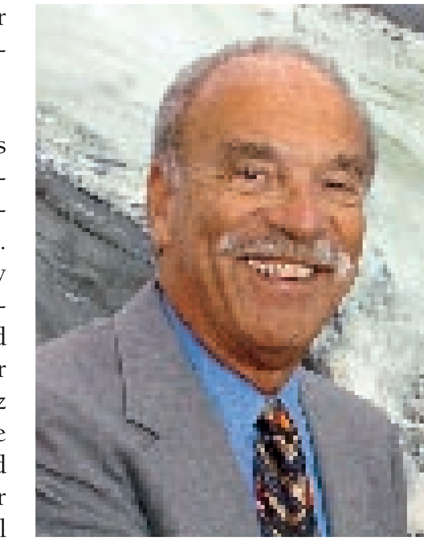
AT THE SAME TIME that Erichsen was working with lawyers to analyze the Getty's misadventures, he was also implementing reforms to prevent a recurrence. The Getty's lawyers began drafting new policies in the summer of 2005 and finished in April 2006. Erichsen worked closely with James Schwartz, a partner at Manatt, Phelps & Phillips. Schwartz was not only an expert in the corporate governance of nonprofits, he'd worked in the California AG's office himself for more than 20 years. Another essential player was Lori Fox, the Getty in-house lawyer who did much of the drafting of the revised policies.

Their goals? "To make the policies stricter in some cases, clearer in others," and to fill any gaps, Erichsen says. They drew from the newspaper articles on the Getty, the Munger, Tolles probe, and advice solicited from the Council on Foundations in Washington, D.C.

There was no big rollout. In some instances they made changes quickly and posted them on the Web site. In other cases, Erichsen and other lawyers met with employees who had to use the rules, and accountants who had to enforce them. The lawyers explained the process they were after to Getty employees in the grants program, for example, and then asked them to rewrite the policies themselves.

As a result, the board now evaluates the CEO's performance and compensation annually. Executives' expenses are examined more closely, and the institution does not cover spouses' expenses. Perhaps the most important change of all was the creation of a governance Web site on which all policies, along with the

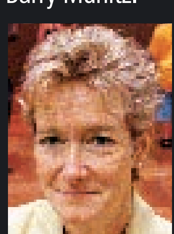
MATTHIAS RIETSCHEL/AP PHOTO (2)



Former CEO Barry Munitz reportedly had staffers ship him umbrellas when he was traveling.

PICTURES OF A SCANDAL

OCTOBER 2004
Getty museum director Deborah Gribbon (below) resigns, citing differences with CEO Barry Munitz.



DECEMBER 2004

A *Los Angeles Times* story raises questions about the sale of Getty property to Munitz's friend, billionaire Eli Broad (above).

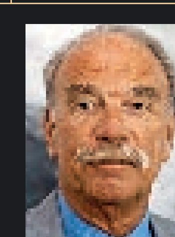
JUNE 2005
Another *Times* story raises questions about Munitz's million-dollar-plus compensation and first-class travel expenses.

JULY 2005
The California attorney general launches a formal investigation of the Getty Trust.

SEPTEMBER 2005
The Getty board of trustees hires Munger, Tolles & Olson to conduct an internal probe.

NOVEMBER 2005
Marion True, former Getty curator, goes on trial in Rome for allegedly conspiring to loot Italian antiquities.

FEBRUARY 2006



Munger, Tolles completes investigation; Munitz (above) resigns as CEO.

APRIL 2006
The Getty board adopts corporate governance reforms that include an annual review of the CEO's performance and compensation.

OCTOBER 2006
The AG releases his report, and takes no enforcement action against Getty or Munitz. But he appoints a monitor.

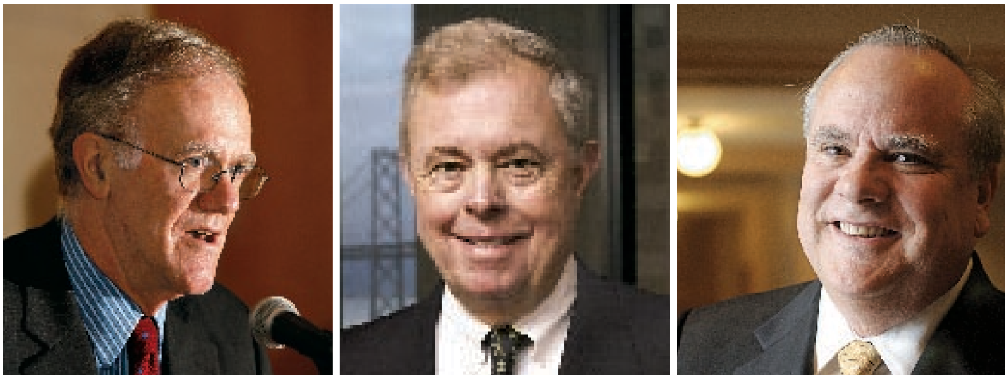
DECEMBER 2006
The Getty settles its antiquities dispute with Greece.

JANUARY 2007
As scheduled, the Getty files its first report with its monitor, former state AG John Van de Kamp.

JULY 2007
The Getty files its second report with monitor.

AUGUST 2007
Getty agrees to settle with Italy and to return 40 artifacts.

JANUARY 2008
The last compliance report is scheduled to be filed; the monitor's term is scheduled to end soon afterward.

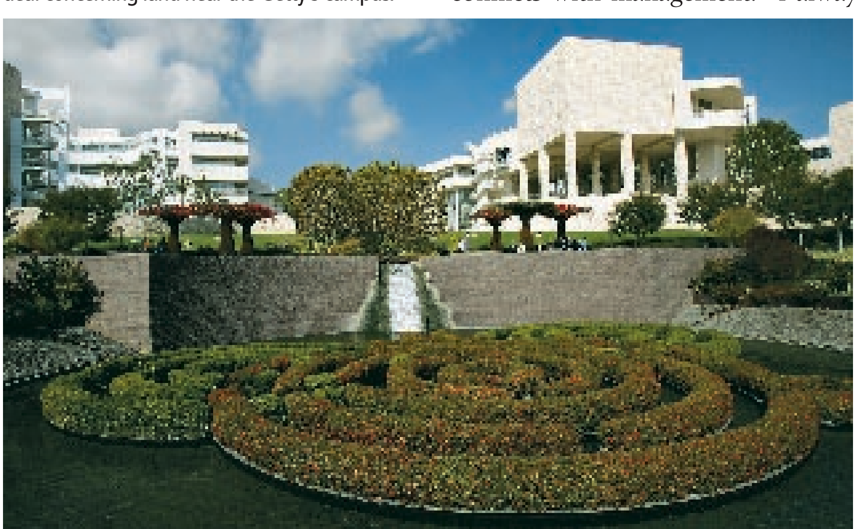


John Biggs (left) quit his post as Getty chairman. John Van de Kamp (center) was named monitor following a probe by California AG William Lockyer (right).

Getty's financial Form 990, are posted. (Another document that details officers' compensation shows Erichsen's total last year was $485,000.)

AG Lockyer was clearly impressed by the changes. He didn't levy any penalties against the institution. And he noted in his October 2006 report that Munitz had already paid the trust $250,000 and agreed to forgo $2 million in severance payments. "While improper expenditures were made," Lockyer wrote, the trust had been compensated by the settlement with Munitz. "Furthermore," the report said, "trustees have adopted policy and procedural reforms designed to prevent such improper expenditures in the future."

The only enforcement action the office took was to appoint an independent monitor "to ensure trustees and employees of the trust implement and comply with the policy and procedural reforms." Lockyer named John Van de Kamp, himself a former California attorney general, as monitor. The Getty was required to file at least three reports, at six-month intervals, beginning in January 2007 and ending January 2008. The trust reports how well it's complying with its reforms, Van de Kamp conducts his own evaluation, and then he passes both reports to the attorney general. As the Getty was preparing its first report to Van de Kamp, the board decided to take the extra step of hiring Deloitte Financial Advisory Services LLP to help with compliance.



California's AG investigated the propriety of a deal concerning land near the Getty's campus.

HAVING SHEPHERDED the Getty through the crisis, Peter Erichsen resigned in August to return to Ropes & Gray (leaving Fox as acting GC). He never considered quitting earlier, he says, despite his conflicts with management. "I always felt I had an avenue to the board," he explains. Biggs understood the GC's role and was always available. "That doesn't solve all your problems," Erichsen adds. "But it's an important safety valve."

Every current and former Getty official interviewed for this story gives Erichsen high marks for the job he did during his six years at the museum—particularly the last three.

But Biggs adds a qualification. Erichsen negotiated a settlement with former museum director Deborah Gribbon after she resigned in 2004. The attorney general's office found nothing wrong with the reported $3 million payment, "based on the damages she could have received if she had filed a lawsuit." But in retrospect, Biggs says, it was a mistake for Erichsen to negotiate it himself. "We should have brought in outside counsel," Biggs says, to avoid placing Erichsen in a position where his loyalties to the Getty and a former colleague might be in conflict. Erichsen says he acted at the direction of Biggs and other board members.

Nevertheless, Biggs, who left the board himself last year, praises Erichsen's work. "I had enormous confidence in Peter," he says. "He performed about as well as he could—under as difficult circumstances as a general counsel could be placed in."

At press time, as Erichsen prepared to rejoin Ropes & Gray, he sounded upbeat. He didn't do everything right at the Getty, and he didn't have all the answers, he acknowledges: "But I think I have some experience that could be useful to the firm and clients."

As the Getty searches for a replacement, Erichsen has one piece of advice for his successor. "It helps to have a sense of humor," he says. And he smiles broadly when he says it. ■

TOP LEFT TO RIGHT: NAJLAH FEANNY/CORBIS; KIM KOMENICH; JASON DOIY; DAVID McNEW/GETTY IMAGES (BOTTOM)