

The Association of Corporate Counsel is the in-house bar association serving the professional needs of attorneys who practice in the legal departments of corporations and other private sector organizations worldwide. Austin ACC was established in November 2004. It serves in-house attorneys in the Austin and Round Rock areas. Click [here](#) to visit the Austin ACC chapter home page.

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Upcoming Events & ACC Webcasts:

April 17, 2008

11:30 A.M. to 1:00 P.M.

CLE lunch – “Coming and Going... Why Free Trade Is Becoming Crucial to Austin Business”

Location: Shoreline Grill, 98 San Jacinto Blvd

Sponsor: Jackson Walker L.L.P.

Registration: Members – no cost; non-members \$15. Please RSVP to Chapter Administrator, Violetta Baczewski at acca@austin.rr.com

May 2, 2008

7:30 A.M. to 6:30 P.M.

Third Annual CLE / Golf / Spa Event

Location: Barton Creek Resort & Spa

Sponsor: McKool Smith, P.C.

Registration: Members – \$50; non-members \$100 (email acca@austin.rr.com to join as member and register at the lower rate). Register early, as availability is limited. Registration deadline is **April 20, 2008**. Fee nonrefundable after deadline. Please go to <http://www.acteva.com/booking.cfm?bevaid=156286> to register.

June 19, 2008

11:30 A.M. to 1:00 P.M.

CLE Luncheon (TBD)

Sponsor: McGinnis, Lochridge & Kilgore, L.L.P.

*** Dates and events subject to change*

UPCOMING ACC WEBCASTS:

To see a full list and register, go to <http://webcasts.acca.com/>

- 4.9.08** FMLA Update – Preparing for Military Family Leave and Other FMLA
- 4.23.08** Patent Case Law Update for In-House Counsel
- 4.24.08** Management of Workforce Reductions in Europe
- 4.28.08** Environmental Marketing Claims: The FTC’s “Green Guides” and Emerging Issues Relating to Carbon Offsets and Climate Change
- 5.6.08** Copyright Issues for In-House Counsel
- 5.13.08** SOX Whistleblower Claims: A Sixth Anniversary Survival Guide
- 5.15.08** Copyright Survival for the Small Legal Department

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Austin's International Law Practice on the Rise by Sue Snyder



Sue Snyder is a Partner with Jackson Walker L.L.P. in Austin. She is the former VP of International Policy & Relations and Executive Legal Counsel for Advanced Micro Devices, Inc. Sue has served as a Presidential Campaign Advisor on International Trade. Sue also has chaired numerous high tech international policy negotiations with numerous countries and authorities around the world.

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The rise of international activity in Austin is staggering. The Austin Metropolitan area is now the 25th largest exporter in the United States with more than \$8 billion of goods exported in 2006. Texas is the largest exporting state. Texas exported over \$150 billion of goods in 2006. Except for California (which exported approximately \$120 billion in goods in 2006), no other state even reaches half of the dollar value of exports of Texas. Even more interesting, the Department of Commerce reports that over 91% of the companies that exported goods from Texas in 2005 were small and medium-sized enterprises (SMEs) with fewer than 500 employees. This equates to more than 19,000 enterprises engaged in international trade in Texas. Texas ranks fourth in the largest percentage of SMEs involved in international trade.

The countries involved in trade with Texas also continue to grow. Texas currently sells to more than 200 foreign countries. The growth rate for most countries varies widely. For instance, between 2005 and 2006, exports to Brazil and China increased by 40% and 35% respectively. Another interesting fact for Austin is that the largest category of exports from Texas is: computer and electronic products. This sector accounts for almost 25% of all Texas exports. More than \$35 billion dollars of computer and electronic goods were exported in 2006.

In addition to the boom of exports, foreign direct investment also has had a tremendous impact on Texas. The Department of Commerce statistics show that in 2005, foreign-controlled companies employed more than 300,000 Texas workers, which was the third largest total among all states. The primary foreign companies creating Texas' jobs in 2005 were from the United Kingdom, France, the Netherlands, Japan, and

Germany. Approximately one-fifth of all manufacturing workers in Texas rely on exports for employment (2005 data from the Department of Commerce). A Business Roundtable report issued last year stated that nearly 2.2 million jobs in Texas are tied to trade.

Another reason why international trade issues are booming is the effects of globalization and trade agreements. Competition is now even more international in nature and very intense. Trade agreements also have recently been on the rise. The Federal Government worked on more than fifteen free trade agreements in the past few years and other countries are engaging in free trade agreements without the United States (e.g. the potential ASEAN trade agreement). The obstacles companies are encountering while selling overseas also are on the rise as to type and impact – from unfair competition, tariff and non-tariff barriers, counterfeiting, potential loss of Intellectual Property, competing against subsidies, etc.

As you can imagine, all of these endeavors increase the need for international legal assistance. From the small companies who need to learn how to use letters of credit, foreign distributors or international offices for international sales to the highly sophisticated companies whose international matters involve trademarks, patents, unfair trade, establishment of free trade zones, seeking international subsidies, etc. To understand the order of magnitude of such problems, the US and EU teamed together to look at the number of fake computer components and came up with

approximately \$1.3 billion of counterfeit items seized in just a two week period (see news reports dated 2/22/08). Furthermore you may recall Pfizer's appeal of the patent infringement matter in China for Viagra, which is a market estimated to be as high as \$2.7 billion. Also, you do not have to look outside Austin to know of the increase in custom audit proposed fines.

All of these international matters are affecting companies in Texas and, of course, here in Austin. Some of the recent matters we have handled for local clients include: negotiation of international tariff elimination barriers; involvement in WTO actions regarding imposition of unequal tariffs, challenging and modifying laws in countries that create non-tariff barriers; challenging and guiding customs audits; bringing actions for unfair international trade matters; assisting companies in establishing presence overseas (opening offices, establishing public/private relationships, obtaining foreign government financial support, establishing distributorships, engaging in licensing, patents and merger/acquisitions overseas); and assisting in export/import matters.

We all know that large companies in Austin have been involved in international trade for years. Many, however, do not contemplate the number of SMEs involved with international matters from right here in Austin. As an example, I highlight one company who has been selling overseas for years from Austin -- High End Systems. High End is an Austin company that provides innovation and manufacturing of the most up-to-date lighting products and control systems that illuminate some of the world's biggest artists on the largest stages, on film and in television studios (everything from Bruce Springsteen to Disney). High End has approximately 160 employees and sells more than 50% of its products overseas. The demand for its products is huge on the international scale. In fact, High End has recently been approached by the Olympics to provide the lighting for the opening and closing ceremonies. The amount of knowledge they have gained regarding the international market is astounding and is typical of the rise others may see in the future.

There is no doubt that international matters are on the rise. In Austin, large, medium and small players are making their mark on the international globe as never before. As lawyers, we can assist in supporting continued growth and success of these companies as globalization continues to impact all of us. Successful companies being able to compete on the international scale can only mean one thing – future jobs, opportunities and economics for our city, state and country. It is an exciting time for our industry to be involved in such issues.

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Free to Fudge the Facts by Ken Isaacson

Ken Isaacson is general counsel to Allstates WorldCargo, Inc., a freight forwarding company headquartered in Forked River, New Jersey, and is a member of the New Jersey chapter of ACC. A native of New Jersey, he graduated from the Massachusetts Institute of Technology in 1975 and received his law degree from Columbia Law School in 1979.

As lawyers, we're constrained by facts. A client comes to us with a problem—a deal to put together, a lawsuit to commence or defend—and the first thing we must do is learn the facts. From then on, all the advice we give and the actions we take are dictated by the immutable facts of the case.

For those of us who are litigators, this is often confounding. We have a meritorious case and a deserving client. If only the facts weren't so...so factual. You know what I'm talking about. Why'd the client have to write that particular email? Why'd he have to say that in front of all those witnesses? It's such a great case, and we're still

in the right, but the client went and did something stupid. And now, as Desi used to tell Lucy all the time: "You've got a lot of 'splainin' to do." If only the facts were just a little malleable, we could avoid a bit of unnecessary tap dancing.

As a lawyer, I write for a living. And I suppose there are cynics who'd even say that lawyers write fiction for a living. We've all heard the complaint that litigation isn't about finding the truth, it's about finding whose version of the truth will prevail. While there may be something to that view, I can honestly say I've never fabricated facts, or intentionally hidden them, to gain the upper hand in a legal matter. But what if we weren't bound to the reality that the facts impose upon us? What if, in the middle of your big case, when you realize that the facts aren't playing out just as you'd hoped they would, you could go back and change things? Un-write the ill-advised email, or un-say the indiscreet remark? You could make things come out just the way you want them to be.

That's the great thing about writing legal thrillers. I get to make stuff up. And if I don't like how it turns out, I get to go back and change it. I'm free to explore "what ifs" and "how abouts" to my heart's content. I can be perpetrator, victim, witness, prosecutor, defense counsel, judge and jury. In short, I get to make up my own facts, and there's nothing unethical about it!

My first legal thriller, *Silent Counsel*, was published in September 2007. The idea for it came to me upon reading a true account of a hit-and-run incident along a highway in Florida some time ago. In that case, the driver hired an attorney and charged him with the task of negotiating a plea agreement with the authorities while at the same time keeping his (the client's) name secret under a claim of privilege. A court battle ensued, testing the bounds of the time-honored doctrine of attorney-client confidentiality: Could the simple name of a client be "privileged information"?

That case resolved itself before the novel legal question was answered by the courts—the driver ultimately came forward on his own. But the magazine article got me thinking. What if the court were to hold that a lawyer attempting to negotiate a plea agreement for a hit-and-run driver didn't have to reveal his client's identity? The prosecutor, no doubt, would refuse to bargain. But what if the mother of the small victim found out that the lawyer knew who had killed her child but maintained his silence, relying on the privilege? How far would the mother go to find out who killed her child? And how dedicated to the principle of attorney-client confidentiality would the attorney be when the going got tough?

With these questions in mind, I set out to write *Silent Counsel*, the story of attorney Scott Heller and mother Stacy Altman. After Stacy's six-year-old son is run down in front of their house, with no witnesses to the tragic accident, she learns that the driver has hired Scott to negotiate a plea arrangement with the prosecutor. But he's instructed Scott to keep his name secret until a satisfactory agreement is in place. The prosecutor refuses to make a deal, and the court rebuffs Stacy's efforts to

force Scott to tell her—or even the authorities—who his client is, holding that it is privileged information. Since the court won't do anything to help Stacy track down her son's killer, she takes matters into her own hands, and is determined to make Scott talk—at any cost... When Stacy's stalking of Scott's young daughter escalates into a kidnapping, Scott makes the only reasonable choice a parent can—cooperate and give up the client. That's when Scott discovers that doing the right thing isn't as easy as he thought, and now the mother isn't the only one looking for the child's killer.

When I first sat down to begin writing *Silent Counsel*, I didn't have a clue how to proceed. I decided to approach the task as I did a legal case, and I remembered an instructor in one of my continuing legal education classes advising of the importance of developing a theme for your case. "A case without a theme is just a bunch of testimony," I'd been told. "A car crash doesn't happen in a vacuum—it's a tragedy that involves real people and real consequences." Cloaking your case with a theme gives jurors a reason to stay interested and alert: "This case is not just about young Will being injured when the buckling mechanism on his infant seat came loose. It's about the kind of corporate greed that places the cost of recalling a defective product and the benefit of saving a child's life on opposite ends of a scale—and tips that scale against the child." Now, with that theme in the jury's mind, otherwise dry testimony about how this strap connects to that latch may be, if not interesting, at least a little more bearable. There's a reason to care.

In the context of a legal case, we start—necessarily—with the facts as they're presented to us. We search for a theme that relates well to those facts and exerts the right amount of emotional pull to grab hold of the jury. Writing fiction, though, allows the reverse.

When I started, the page was quite literally blank. There were no facts, only an idea: What if the attorney representing a hit-and-run driver didn't have to reveal his client's name because the court held it was privileged information? With that intriguing premise in mind, I began constructing facts: I decided that the victim of the driver had to be a child, because readers (my jury) would care more about this arcane legal issue if the attorney-client privilege was being used to shield someone responsible for a youngster's death. I knew that the lawyer in my story would face a difficult ethical dilemma—needing to protect the confidences of a client while feeling that the "right" thing to do would be to help the grieving mother.

Because I had never faced such a challenge, I decided my lawyer should (like me) be unaccustomed to criminal practice and protecting the rights of the guilty. I made him a corporate litigator handling a "quick referral" for a friend—just a matter of making a few phone calls to the prosecutor to see if a deal could be made. This way, in the process of writing, I could experience the doubts and misgivings of my protagonist as he did, for the first time. And, I decided that my lawyer should have a young child of his own, so the conflict he felt between duty and right would strike close to home.

From this germ of an idea, and these few basic facts, emerged competing themes: *Silent Counsel* would be about a lawyer's struggle with his personal beliefs when confronted with the fundamental need for secrecy between client and attorney. It also would be about a mother's frustration and rage at a system that places more value on a legal technicality than bringing the killer of a six-year-old boy to justice.

I knew little more about *Silent Counsel* than this when I began writing. I've since heard the writing process compared to driving from New Jersey to California in the dark, being able to see only as far as your headlights illuminate. You know where you are, you know where you ultimately want to be, and you have a vague idea of how you're going to get there. But all you know for sure right now is the ground you'll be covering within the range of your headlights—and something just outside your view may change your plans. You discover that the bridge you planned to take across the river is washed out, and instead of going directly from Point A to Point B, you find yourself driving miles along the river until you come upon the next way across. You planned on driving west, but unforeseen weather conditions force you to take the southern route instead. This is how writing was for me: I'd

start a chapter knowing generally where I was heading, with some specific short-range ideas of what route to take, and find out quickly that the characters had something else in mind. I'd watch, almost a spectator, as dialog unfolded, and I'd discover things about my characters and the story that I hadn't known before.

That's when it becomes really useful to be able to control the facts. Remember, I lamented a lawyer's inability to un-write the ill-advised email, or un-say the indiscreet remark? In the middle of writing fiction, when the story takes an unexpected left turn, and the sun-shiny day mentioned a few chapters ago no longer suits your purpose, you can simply go back and create a thunderstorm. Believe it or not, it actually takes some getting used to. I remember the first time during the writing process when an action one of my characters was about to take just wasn't consistent with the facts up to that point. I was stumped. How could he possibly do that in view of what had come before? Then it dawned on me—what I had already written was not etched in granite. I could go back and rewrite history. A little thought and a couple of keystrokes, and a new path opened for my character. That was heady stuff.

As lawyers, we all have the tools necessary to write fiction. We're an imaginative and creative bunch, we can organize facts and concepts, and we know how to convey our ideas in compelling fashion, in writing. And, our day-to-day activities are fertile grounds for material. Don't like the ruling the judge just made in the middle of your trial? Just sit back and enjoy conjuring up the fate that might befall him if he were a character in the book you're writing.

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