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Welcome New Members

Paul Ostien, Alstom Power Inc.
Jill Ferguson, Barnes Group Inc.

ACC's 2008 Annual Meeting: Calling All New, Innovative Ideas for CLE/CPD Programs

Have new and innovative ideas for a CLE/CPD program? Send them to ACC. We are currently accepting program ideas for the 2008 Annual Meeting ("In-house, Informed, Indispensable", October 19-22, Seattle, Washington). To get started, go to <http://am.acc.com>, click on the "Call for Programs" link on the left side of the page, and select the appropriate category (members and in-house counsel, or sponsors) to submit your idea. ACC members/In-house counsel submissions are due by January 11, 2008. Your ideas are what make ACC's Annual Meeting a valuable resource every year. Questions? Contact the education team at education@acc.com; 202.293.4103, ext. 315.

New InfoPAK: The New Face of Union Organizing Success—Neutrality Agreements, Ballot-Free Elections and Corporate Campaigns

In recent years, organized labor has employed new organizing issues, aggressive campaign strategies, and innovative techniques designed to catch the unwary employer off guard. Minimizing vulnerability to corporate campaigns should become part of the organization's overall risk management strategy. This new InfoPAK documents steps that can improve the ability to avoid or survive a corporate campaign, and will enhance an employer's overall human resource posture. InfoPAKs are free to members. Access it here: <http://www.acc.com/infopaks/newunionorganizing.php>.



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Philip S. Wellman President's Message

Greetings!

I have just returned from the ACC's Annual Meeting in

Chicago. This year's event was the largest ever, and delivered—as usual—a great set of CLE programs, networking opportunities, and enough vendor tchotchkes and swag to sink a ship. It also was good to see a few friendly faces from the Connecticut Chapter, and I am pleased to report that the program we sponsored, Attack of the Patent Trolls, was very well attended and received. Special thanks to my co-panelists, Robin Smith from Lego Systems, Josh Krumholz from Holland & Knight, and Chris Gerardi from FTI Consulting (and to the Red Sox, who won game four the night before our program). For those interested in this topic, the presentation materials are available on the ACC's website.

On the MJP front, the revisions to Rule of Professional Conduct 5.5, and the new Authorized House Counsel Rule (Practice Book §2-15A), are set to go into effect on January 1, 2008. The new application for in-house counsel who are not admitted in Connecticut is now available on the Connecticut Bar Examining Committee's website. The

CBEC's staff has requested, however, that completed applications not be submitted prior to January 1. Also, ConnACCA will be presenting a program on the new rules on December 13.

Lastly, I want to take this opportunity to thank everyone who has helped us to achieve another great year, in particular our program sponsors: GC New England; McCormick, Paulding & Huber; Epstein, Becker & Green; Halloran & Sage; Saxe Doernberger & Vita; and McCarter & English. I also want to thank the members of the ConnACCA Board who have helped out so much during my tenure as president of the chapter. I am pleased to have seen a 20% growth in chapter membership and the implementation of a successful program and sponsorship model. With that, I am very excited to announce that Ken Bunge will be taking over as chapter president on January 1, 2008. Ken has been a significant contributor to the organization over the past few years, and I am quite confident that he will continue to build on our recent successes. Ken—best of luck, and I look forward to working with you and the rest of the Board in 2008.

All the best,
Philip S. Wellman

Early Renewal Rate Expires on December 15

Most of our members are scheduled to lapse on December 31. Renew your membership by December 15 to receive this year's rate of \$225 and to avoid interruption in benefits. If you don't renew by December 31, you will miss out on chapter program announcements and other chapter broadcast email messages as well as ACC Docket issues featuring articles on records retention, outsourcing, litigation management, and compliance. Access to the Virtual Library and InfoPAKs will also be cut off, restricting you from accessing the hundreds of sample forms, policies, articles, checklists, and helpful web references available in these publications. To ensure that you don't experience an interruption in services, simply renew your membership now at <http://www.acc.com/membership/renew.php>. Questions? Contact the membership department at 202.293.4103, ext. 360; membership@acc.com.

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Discover Best Practices from ACC's Annual Meeting

Susan Hackett,
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I recently attended ACC's annual meeting in Chicago ... heck, who's kidding whom? It's a command performance for ACC staff and we fight over the privilege of attending and spending such high-quality time interacting with members!

There's an adage here at ACC that a former ACC Board Chairman (Bill Lytton, now retired CLO of Tyco, then CLO of International Paper) used to help us define a meeting's success for members: With so much information and so many "opportunities" flying by at light speed in their day jobs, anytime a member can go to a meeting and pick up even one really good, practical idea to take back home and implement, they will feel that the time was spent well. So here's my review of several really good ideas collected from the ACC Annual Meeting that I'd like to share with those of you who weren't there.... Maybe next year (October 19–22, 2008 in Seattle) you'll be able to pick up some gems without a middleman!

In no particular order:

■ **The first thing you do is send everybody home.** A ton of great ideas for responding to government investigations emerged from a wide variety of programs at the meeting, but one that resonated with many attendees is the idea of establishing a policy that if uniformed, government agents invade your premises and begin a sharp edged investigation, you should send the staff home immediately. The govern-

ment often uses the "raid" tactic not so much to collect documents, but to catch employees unaware and to scare them into saying things that damage the company—they don't do this in a formal interview environment, but they will storm an employee's office and begin unpacking their desk drawers. So if they show up, leaders from the law department and other designated staff should surely escort government officials around and cooperate fully, but only after the staff has "evacuated" the premises—the government is not entitled to interview employees without notice and authority, especially without counsel present (either the company's or the individual's personal counsel). They won't be happy with you for killing their fun, but if they're investigating your company in this manner, it's too late to wonder if you'll get extra points for serving coffee and cookies.

■ **On the subject of lawyers as targets in criminal enforcement actions or prosecutions:** There's a whole lot of stuff out there on increasing lawyer liability for client failures, as well as why it is that lawyers are more likely to be targets, along with their clients, when the government comes calling. A number of programs focused on these issues, but one of the most troublesome worries repeatedly raised was whether there was anything that lawyers can do to avoid being called as fact witnesses (especially since many corporate counsel wear multiple hats in their jobs and carry business responsibilities). One idea discussed was for the in-house lawyer to file an appearance as counsel of record for the case. It makes it far more difficult for the government's counsel to call

the defense counsel on a matter as a fact witness, especially, as is almost always the case, when there are non-lawyers in the company who can testify to facts that the government wants to explore and document them. Calling a lawyer to do this endangers the client's ability to assert privilege over anything the lawyer worked on in the past (subject matter waiver) or, for that matter, in the future.

■ **Outside counsel budgets—an oxymoron?** Unfortunately, it seems so. One great idea presented by a large law department that has trouble getting certain high profile firms to follow clearly negotiated and detailed budgets for large matters is to have the board (or a relevant board committee) "approve" the outside counsel's budget for major projects. Then, when the outside counsel suggests that they're going to have to bust the budget or calendar because of "unforeseeable" events, you can ask them: "Would you like to notify the board of this recent development in person, or by report for their next meeting?" Let them know that the in-person presentation is preferred since they'll be able to answer board members' questions directly onsite. Heck, maybe you could sell tickets to your in-house counsel friends and colleagues?

■ **More on outside counsel costs:** Institute a system of shadow bills for outside counsel matters you're most concerned stay within budget or on track. Shadow billing is a law department-driven mechanism for reviewing outside counsel bills as each one comes in, and checking on whether they're on track with cost estimates that the department calculates, usually based on historical experience but

maybe based on other criteria, such as the spending cap for the matter/its value. For each relevant billing period, you compare the actual bill with the shadow bill you've predicted; if you know that monthly costs should be averaging \$35,000, and you start receiving bills for \$3,000 or \$300,000, you know that the matter is not proceeding as planned and is likely to miss budget. You know to ask outside counsel NOW for an explanation of what is causing the variance. You may find their answers completely satisfactory, you may have estimated poorly, or you may decide early out that your outside counsel is not properly managing, supervising, or budgeting the matter and can nip errant behaviors in the bud. After all, it's worse to have this conversation after the matter is irreversibly out of control and over budget.

■ **Think about establishing a more active role for lawyers in government relations.** An increasing number of law department leaders are either leading or supporting their company's "capital" office presence to stay abreast of developments that will affect your company or industry, and to influence emerging regulations when possible. The role of company lawyers is to help ensure that legislation doesn't lead to regulatory nightmares for the company. Involvement of the legal staff does not always entail directly lobbying activities, but usually does include responsibilities that confer new career challenges and personal development for lawyers somewhat trapped within the glass ceilings of their current in-house positions.

■ **Carefully consider the evolving relationship you may have with your**

company's outside auditors: While that primary relationship is "owned" by the CFO, you are likely to be increasingly involved in managing the auditor's requests, and likely also increasingly concerned about what auditors are asking to see in the conduct of their regular reviews of the company's fiscal health. The jewel: focus on a more proactive (rather than waiting to be placed in a reactive) role in anticipating some of these issues and negotiate them with the auditors in advance of retention. A panel addressing this subject and reporting on an ACC initiative to improve the lawyer-auditor relationship offered lots of specific ideas. Catch some of them in the material archived at www.acc.com/php/cms/index.php?id=368.

■ A number of programs touched on the issue of helping counsel prove (as in "quantify") their value to their clients, in spite of their status as a "cost center" within the company. Some counsel discussed their efforts to create what amounts to "dashboards" for their client leadership (a dashboard generally appears on the client's screen when opened and provides a ticker of information). These dashboards provide real-time status and dive-down detail on the costs that the client's area has "incurred," whether charged back to the client or not. This provides a method of linking law department costs more concretely to services and to client actions. Obviously, someone has to feed the dashboard beast, but it's worth thinking about, especially if the information could be entered by non-lawyer staff, outside counsel, or consultants.

* I'm going to let you see all the "substantive law" good ideas by logging onto the ACC website and checking out the course materials posted on the annual meeting's homepages.

One last reminder on picking up pearls at the meeting: If you attend the meeting in Seattle, set aside time to shop the exhibit hall for more good ideas than you can shake a stick at. I mean it. Unless you've been to an ACC annual meeting before, you have no idea what I'm talking about, but ask anyone who's been. The exhibit hall/trade show floor is the busiest place at the meeting. There are almost 200 firms (outside counsel, legal services providers, legal tech experts, staffing and professional consultants, etc.) present and they all bring their tippy top people who understand your business and can fashion solutions designed just for law departments. If you're in the market to interview firms, preview technologies, or discuss consulting services, come to the meeting with your pencil sharpened and your exhibit hall map marked with the most direct routes to visit the folks you need to see. You will have an unparalleled opportunity to meet with the top providers of virtually everything a law department needs: you can talk to them for 30 seconds or 3 hours, with as little or as much specificity as you like; if you're not interested, you walk to the next booth (usually with some nice swag in tow!). This is so much easier than inviting a line of prospects to interminable meetings in your offices and finding out they've sent a local account rep that can't answer your questions.

Comments or ideas for me? Contact me at hackett@acc.com.