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## Congratulations

NEOACCA congratulates the following members who were honored by the Cleveland Bar Association as one of their Minority Partners and In-house Counsel Leaders.

**William H. Jairrels**, Alcan Aluminum  
**Paul R. Keen**, Argo-Tech Corporation  
**Bertram Bell**, Goodyear Tire & Rubber Company  
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## Welcome New Members

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## Jonathan Dean President's Message

Our former president, Michelle Proia, has shot off to her dream job in Columbus, where

she is the assistant general counsel of North American operations for Mettler-Toledo, a Swiss-based company, making me your new and slightly surprised president. Michelle, we miss you already. However, I am excited about the position and about ACC. In October, I attended the national convention of the ACC in Chicago with 32 NEOACCA members and over 1,800 ACC members in all. I had the met other chapter presidents, both new and experienced, and attended the many CLE sessions.

At the chapter presidents' dinner on Sunday night, our chapter received a silver bowl for our success in retaining members—fortunately Michelle and Nancy Schneider were there to accept our prize, a large silver cup. We enjoyed delicious food and had the opportunity to meet, among others, Tori Payne whose name we have seen so often. We watched a presentation on the chapter of the year awards as well—a goad to further improvement for the future of our chapter. At the CLE sessions lawyers from companies all over the country presented the bulk of the material—relatively few law firm people participated. One of our members commented to me that the CLE sessions were like therapy—the presenters had to deal with

exactly the same issues that each of us faces every day.

Here in Northeast Ohio, we have a solid chapter membership and a wonderful retention rate. Our CLE sessions are first-rate and well attended. We have developed a major focus on helping others, both by volunteer work and contributions. We have helped Cleveland State students make the choice between private law practice and government or not-for-profit service through our tuition loan forgiveness program. We brought our legal skills to bear on the problems of the poor in several legal aid clinics. And we spread mulch in a Cleveland park and built benches and painted murals at an Eastside public school. We had a successful 2006 year-end gathering at Lola's, of Iron Chef fame, and continued that tradition this year at the House of Blues.

For the future, we will build on our success. I am giving thought to the following ideas that came up repeatedly during the convention, at our board meetings, and in conversation with members:

- We need more participation by in-house counsel as CLE presenters, to give those sessions some of the inside view that we found so stimulating in Chicago. The board has already determined to ask presenting firms to include a lawyer from a client organization in their presentations. Other chap-

ters have found this approach works well. We will watch how this thrust develops in the course of the year.

- Many of our employers have sponsored minority interns over the summer. We may wish to consider joint programs where interns can have the experience of working in several different companies during the summer, making sponsoring an intern a somewhat less daunting prospect and more stimulating for the intern.

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## Discover Best Practices from ACC's Annual Meeting

Susan Hackett,  
Senior Vice President and General Counsel  
Association of Corporate Counsel  
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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](http://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](mailto:hackett@acc.com).

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- Many successful chapters sponsor a summer social or golf event. I would like to see us reconsider getting together in summer, as well as at Christmas.
- Many of us are dealing with the application of business methods such as six sigma and the Malcolm Baldrige criteria to our own law department. Statistical analysis and process standardization may not seem professional, but our clients are expecting us to use the same methods for streamlining our operations that they do with theirs. I would like to see our chapter become more active in assisting each other as we chart our courses across these unfamiliar seas.



*Nancy Schneider, Michelle Proia, and Jonathan Dean with the chapter's Chapter Challenge Award.*

I am humbled by the accomplishments of those who have formed and nurtured this chapter over the years. I hope to

contribute to our mutual work-in-progress. I look forward to speaking with all of you during the next two years, and to being part of the continued success of the ACC in northeast Ohio.

## A Cavity in Communication: Why Lawyers and IT Professionals Have to Start Talking

By Brett Burney

Attorneys and IT professionals rarely intermingle; but a convergence of interests is starting to form around the risky bubble of electronic discovery.

### FRCP Fun

The amendments to the Federal Rules of Civil Procedure (FRCP) in December 2006 officially recognized the discovery of "electronically stored information." They also imposed a subtle responsibility on litigating parties to better understand how their electronic information is maintained and preserved.

For example, FRCP 26(f) encourages parties to meet early in the litigation process to discuss timing and form issues relating to discovery. The amended Rule adds sections

that explicitly direct the parties to discuss the form or forms in which electronically stored information will be produced. If general counsel is not familiar with how their company stores electronic information, and outside counsel certainly is not familiar with the process, who will knowledgeably participate in this required discussion?

Similarly, FRCP 26(b) was amended to relieve a party from producing electronically stored information that is determined to be "not reasonably accessible." This determination can rest upon a variety of factors such as the age of the archived data, the fragmentation of deleted data, or simply the distributed nature of a complex database. If you are not comfortable in discussing these issues, you could be producing more information than necessary to the opposing side.

### A Survey A Day...

There were two surveys published a year ago that highlight the lack of preparation at many corporations concerning electronic discovery.

First, an ACC survey performed at the 2006 Annual Meeting reported that only 7% of corporate counsel rate their companies as being prepared for the ediscovery amendments to the FRCP.

The second survey was conducted by Computerworld, Inc. and found that 42% of IT managers and staffers did not know the status of their company's preparation for the amended FRCP and 32% said their companies were not at all prepared.

These surveys, along with biting court opinions such as *Zubulake* and *Morgan Stanley*, spotlight a gaping communication cavity between legal and IT departments. GCs are not expected to become experts in IT systems, but they must become familiar with the terminology and general concepts. Likewise, IT professionals are not expected to learn the law, but they must understand that software and policies they implement affect more than just their technical network.

### All You Can Meet

Frequent meetings between GCs and IT staff will help each side become familiar with each other's roles in the company. For the general counsel, basic questions regarding the e-mail system and document storage/management systems will help build a foundation of technical knowledge.

One structured way to approach these meetings is with an eye towards creating a "data map." Most IT systems administrators develop flow charts of how data moves in and around their network. A data map will pinpoint where electronic data is being created and where it is

being stored. A data map is more than a blueprint of physical network servers and computer—it should illuminate exactly what software applications are in use at the company, explain how employees are remotely accessing e-mail, and precisely describe the various forms of electronic communications in use at the company (i.e. e-mail, instant messaging, voicemail, etc.)

Data backups and archives are critical topics for discussions with your IT professionals. It is imperative that you understand the current processes and technology used for backing up electronic data, as well as the timetable for preserving such backups.

### Sailing Into A Safe Harbor

Amended FRCP 37(f) adds the so-called "safe harbor" rule to the list of considerations involved in electronic discovery projects. The amended rule purports to protect a party from having to produce electronically stored information that was deleted "as a result of a routine, good-faith operation of an electronic information system." The amendment lends a tremendous amount of support to establishing and enforcing a records retention policy that is consistently followed.

To establish an effective policy, you will need the active collaboration of your IT department. GCs can supply the legal reasons for enforcing a records retention policy, but IT staff can provide the realistic technical boundaries for such a plan.

No one has time for more meetings on their busy schedules, but zealous dialogue between GCs and IT professionals are absolutely necessary to minimize the inevitable risks found in electronic discovery.

*Brett Burney is Principal of Burney Consultants LLC (www.burneyconsultants.com). He writes a monthly legal technology column for LLRX.com and is a frequent contributor to law.com and Inside Counsel magazine.*

## Community Service Day at Martin Luther King Jr. Career Campus

By Marilyn L. Cargile,  
Campus Administrator

Kudos to ... volunteers from the Northeast Ohio Association of Corporate Counsel for the wonderful service day at Martin Luther King Jr. Career Campus. The atrium looks awesome, with the beautiful mums and bushes that your team planted. We can't wait until spring time to see the burst of color as the daffodils, tulips and "blue bells" bloom! We will probably paint the new picnic tables in the spring. ... The murals are beautiful and we look forward to placing them around the building to beautify the campus as well. We were especially happy to have a CMSD board of education member and NEOACCA member Ms.

Natalie L. Peterson and her husband among the 120 City Year Cleveland Corps members, Smith Barney and NEOACCA volunteers. Again, many thanks, and please



NEOACCA members who volunteered with City Year and Smith Barney at Martin Luther King Jr. Career Campus: (L-R) Steve Lee, Jonathan Dean, Michelle Proia, Nancy Schneider, Mike Gardner, Natalie Peterson, John Ritchey, and Cindy Binns (not pictured Vince Slusarz).

know that our students and staff are very appreciative of the wonderful service projects completed here at Martin Luther King Jr. Career Campus on September 28, 2007.

### Thank You

NEOACCA SINCERELY THANKS the following members for their hard work and dedication in participating in our pro bono activities in 2007. If you volunteered and your name does not appear, please advise us of your participation at [neoacca@centurytel.net](mailto:neoacca@centurytel.net).

Kristina Arcara, Premier Farnell  
Cynthia A. Binns, GrafTech International Ltd.  
Matthew T. Brady, Eaton Corporation  
Allison E. Cole, The Sherwin-Williams Company  
Jonathan Dean, Eaton Corporation  
David H. Fogarty, Medical Mutual of Ohio  
Mike Gardner, Oxford Mining Company  
Julie A. Harris, Novelis Corporation  
William F. Hogsett, Eaton Corporation  
Helen S. Jarem, The Sherwin-Williams Company  
Charles E. Jarrett, The Progressive Corporation  
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Betsy Rader, Locum Medical  
John J. Ritchey  
Vince Slusarz, Kinetico, Inc.  
Gregory A. Smith, Eaton Corporation  
Taras G. Szmagala, Eaton Corporation

## Upcoming Events and Programs

January 17 CLE Seminar: *Brave New World(s): Legislative, Case Law, and Enforcement Updates in Environmental Risk Management*, presented by McMahon DeGulis, LLP

February 21 CLE Seminar: *Executive Compensation* presented by Thompson Hine LLP

March 13 CLE Seminar: *UCC Battle of the Forms* presented by Roetzel & Andress

## ACC News Briefs

### 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](mailto:membership@acc.com).

### 2007 ACC/Serengeti Managing Outside Counsel Survey Report

Find out how your management of outside counsel compares with the approach of your in-house peers. Learn about the latest techniques being used by other law departments. Now in its seventh year, this survey report provides unique and valuable information regarding the diverse strategies being used by in-house counsel to manage their work with their law firms. Specific benchmarks by size of company and size of law department permit useful compar-

isons with your practice. From amounts spent and fee structures, to common management techniques (such as retention terms, alternative fees, and budgets), to technology solutions (such as electronic billing and Internet-based services), detailed information is summarized so that you can learn from the experiences of other in-house counsel. In addition, tables summarize the high, low and average hourly rates paid by corporate law departments for specific types of work in metropolitan areas across the country. The 150 page report is provided on a CD, which organizes information for ease of reference. To get a free benchmarking worksheet or to order the full survey (discounted for ACC members), visit the Serengeti website at <http://www.SerengetiLaw.com>.

### 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>.