

## President

**Reagan McCoy**  
Concord Oil Co.  
210.224.4455  
rsmccoy@concordstx.com

## President Elect

**Diane Hirsch**  
Valero Energy Corporation  
210.345.4172  
diane.hirsch@valero.com

## Vice President

**John Bibb**  
Kinetic Concepts, Inc.  
210.255.6838  
Bibbj@kci1.com

## Vice President

**Ingrid Etienne**  
The Nature Conservancy  
210.224.8774 x251  
ietienne@tnc.org

## Vice President

**Kay Grimes**  
Lone Star Bakery  
210.648.6400  
kgrimes@lonestarbakery.com

## Vice President

**Richard Larsen**  
MDI, Inc.  
210.582.2664  
richard.larsen@mdisecure.com

## Secretary

**Abel Martinez**  
H.E. Butt Grocery Co.  
210.938.8232  
martinez.abel@heb.com

## Treasurer

**Robert Leckie**  
rbleckie@gmail.com


## Immediate Past President

**Lee Cusenbary**  
Mission Pharmacal Company  
210.581.0680  
lcusenbary@missionpharmcal.com

## Executive Director

**Amber S. Clark**  
830.336.2049  
accasouthcentral@yahoo.com

**Tradition.** Commitment to quality legal service for over 100 years.  
**Innovation.** Creative, cost-effective solutions for our clients.



**JW**

**JACKSON WALKER L.L.P.**  
TRADITION AND INNOVATION SINCE 1887

Intellectual Property • Energy • Business Transactions • Litigation • Real Estate • Bankruptcy  
Labor and Employment • Tax and Estate Planning • Legislative • Health Care • Immigration

Austin • Dallas • Fort Worth • Houston • Richardson • San Angelo • San Antonio

www.jw.com  
1.800.422.3339

**Job Openings?** Is your company looking to fill an in-house position? Do you know about a current in-house job opening? If so, please let us know so that we can advertise the position to our membership. Send an email to Amber S. Clark, executive director, at [accasouthcentral@yahoo.com](mailto:accasouthcentral@yahoo.com).



ACC  
1025 Connecticut Ave. NW  
Suite 200  
Washington DC 20036



## Reagan McCoy President's Message

We are quickly approaching the end of another year and the busy

holiday season. I would like to wish you a very joy filled holiday season and the best as we go into 2008. I would also like to take this opportunity to thank you for allowing me the privilege of serving this great chapter as the 2007 ACC South/Central Texas Chapter president.

I have really enjoyed working with all of the great chapter board members, committee members and advisors. This is my fourth year being part of the chapter's board, and I have made great friendships and have learned a lot from my fellow board members. I truly believe that active participation—whether it be on the board, on a committee, in the cast or crew of Ethics follies, or as a regular attendee to our chapter functions—is the key to getting the most out of your ACC membership.

I would especially like to thank my predecessor, Lee Cusenbary, for the time, effort and energy he put in to writing, producing, and directing our very successful Ethics Follies 2007. With more than 25 cast and crew members and over 150 attendees, this special 10th

Anniversary Ethics Conference was a true record breaking "hit." Anyone who has attended Ethics Follies can testify to the talent we have among our local legal community. While all of the performers were spectacular, I am particularly impressed with Lee (from speaking with the rest of the cast, I know that they are too!). For the third year in a row, Lee has been the leader behind our show's success as the writer, producer, and director of our hit show. You may have heard all of the comments about how talented Lee is and how hard he must have worked to pull the show together, but as great as it was, "Ethics Follies" offers only a small glimpse into Lee's musical talents and abilities.

I bet many of you didn't know that Lee produced a double CD this year that has sold in the top 10 ranking for Broadway and Vocal category on [www.amazon.com](http://www.amazon.com). Working with a composer in New York, Lee recently completed a three year writing project on an original musical drama called "Lament," which is based on the story of the conspiracy to overthrow the English monarchy in 1648. Lee's musical is currently being considered for production as a premium cable original film, an animated feature film, and a stage production! To learn more about it, visit [www.lamentthemusical.com](http://www.lamentthemusical.com). We truly have a star among us! Thank you, Lee

for sharing your awesome talent with us! Thanks also to all of the cast, crew, and sponsors of Ethics Follies 2007.

If you would like to become more involved with the chapter in any capacity, big or small, please let us know. New ideas are always welcome. Happy Holidays to you and best wishes for a prosperous 2008.

<b>Discover Best Practices from ACC's Annual Meeting</b> .....	2
<b>Member Spotlight: Carolyn Shellman</b> ..	4
<b>ACColades</b> .....	5
<b>Don't Miss</b> .....	6
<b>Welcome New Members</b> .....	6
<b>Follies Full of Razzle Dazzle: Our Chapter's 10th Annual Ethics Conference</b> .....	7-9
<b>Thank You Ethics Follies 2007 Sponsors</b> .....	9
<b>After the Interview: Mastering the Transition From Your Current to Future Employer (Part III of a Three Part Series)</b> . . .	10
<b>A Lawyer's Christmas Greeting</b> . . . .	11
<b>English-Only Policies</b> .....	12

## Discover Best Practices from ACC's Annual Meeting

Susan Hackett,  
Senior Vice President and General Counsel  
Association of Corporate Counsel  
hackett@acc.com

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 that 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).

## Member Spotlight: Carolyn Shellman



*Carolyn Shellman is a Senior Vice President and General Counsel for CPS Energy.*

### How long have you been a member of ACC? What is the greatest value you get from the organization?

I have been an ACC member for less than two years after years in private practice.

Being new to the in-house world and new to the San Antonio legal community, the thing I have enjoyed most about ACC is meeting lawyer colleagues from other businesses in the area and hearing their stories. Every legal community has a history—law firm mergers and dissolutions, who the real characters are, who the best judges are, and where they came from. ACC meetings give me a chance to ask my table mates for their recommendations and advice about legal issues and everything else related to San Antonio. Plus, the luncheon speakers provide a wealth of information about topics that I need to understand.

### Tell us something about yourself that may surprise other people.

My first paying job was as a tumbling instructor at a YMCA. I won't say how long ago that was but the class I taught (tumbling) now has a different name (gymnastics), which might tell you something about my skill level and how much the activity has changed. Do you ever watch big-time college cheerleaders? I did not teach those skills in my class.

### Where did you attend college and law school? What did you enjoy most about your college and law school experience?

I received my undergraduate degree in Psychology from Vassar College and my law degree from the University of Oklahoma. At Vassar I loved the small classes, the academic curiosity, the high expectation for scholarship, and the strong friendships I formed during a four-year on-campus living experience. I just went to a Vassar reunion where women (and men) celebrated landmark reunions (including women from the Class of 1932—75 years!). The best part of the reunion was visiting with all the accomplished women in my class. That made it tolerable to stay in a 100+ year old dormitory with co-ed bathrooms and no air conditioning.

Law school at OU was also a great experience. I went right to law school after college, so the academic rigor was not a problem. I loved the issues, both the substantive and policy issues as well as the procedural mechanics of how to get things done. I have never had a job since graduation where I didn't appreciate going to work and the intellectual abilities of the lawyers I was working with.

### What are your most memorable or significant accomplishments as a lawyer?

I've been practicing telecommunications and energy law for more than 20 years. During that time, I have worked with clients in both industries as they have been deregulated. My very first telecommunications clients were long distance resellers, back when that was the only form of competition in the industry. Since then, competition has emerged in many other telecommunications services. More recently, I represented a large electric utility's competitive retail electric provider when the electric retail market in Texas was opened to competition in 2002. Although the score card on deregulation has been mixed, Texas has been on the forefront of competition in both of these areas and it has been exciting to help shape the legal framework for getting that done.

But, as rewarding as this part of my career has been, one accomplishment I am most proud of was a pro bono international child abduction case I handled several years ago. I worked with a lawyer in Argentina to help locate a five year old girl in Texas and return her to her father in Mendoza, Argentina. The mother was residing in the US without legal authority and was hiding the child despite Argentine court orders that she be returned to Argentina for a custody hearing. It took months of creative investigation and lawyering, but we found the little girl and convinced the court here to issue the orders we needed. The whole process was very emotional and rewarding. The best part is to hear how the little girl and her father are happy and thriving. One of my goals is to visit them and my Argentine lawyer friend some day.

### What are some of your hobbies and interests? What do you enjoy doing outside of work?

I run, I play tennis, I go to the theater, I read and, in the fall, I'm a big college football fan. I also just received a letter notifying me that I have been nominated for a "Who's Who among Women Professional Architects and Design Professionals." However, since I'm not a decorator or an architect and have absolutely no experience or skill in that arena, I am pretty sure it was a mistake.

### What is your favorite book or movie? Why?

I am such a reader that it is hard to pick a favorite book. One that comes to mind is "A Prayer for Owen Meany" by John Irving. It is humorous, poignant, a book about faith and humanity. One of my favorite movies is "The Day the Earth Stood Still," a 1951 science fiction classic about a space alien who comes to earth on a peace mission. I have a model of one of the movie's characters, the robot named Gort, in my office. It is a beautiful, very stylized movie with a timeless message.

### Who influenced you most to become a lawyer?

Let me answer that question this way. Last weekend I attended a play that was followed by an informal Q&A period between the audience and the actors. A question was asked about the decline of theater attendance in the US and how to get younger people interested in, and attending, theater when so much of modern entertainment is electronic and digital. One actor said that taking a child to the theater is the best way to pique the child's

interest because kids watch actors on stage and say "I want to do THAT!"

In my case, after my freshman year in college, I went to a lecture by Ralph Nader in his early consumer crusader days. I was so inspired by the idea of righting wrongs and using the law in positive ways that I thought "I want to do THAT!" And so I did.

Over the years, what I have appreciated most about my decision to become a lawyer is that lawyers are interesting, talented people who work hard to make the world a better place. I had lunch recently with Judith Blakeway, a lawyer here in San Antonio. Judy told me about a time when she appeared before the Texas Supreme Court and was asked, during argument, to discuss the nuances of a difficult legal issue. After the argument, a distinguished looking gentleman she didn't know approached her, introduced himself, and spoke from personal knowledge about the case she had discussed with the Court. She was impressed with how generous and gracious he was and remembers him for it. The gentleman who spoke to her was the Honorable James Baker, then recently retired from the Supreme Court, and now practicing law in Dallas. To me, it illustrates perfectly the special intellectual and professional bond that we as lawyers and colleagues share. It is why I am proud to be a lawyer and grateful to have had a career where my colleagues, like the members of ACC, are almost always the people I admire most.

## ACColades

### New to In-house:

**Curt Brockman**, formerly with the law firm of Bracewell Giuliani, has joined the legal team at CPS Energy.

**Virginia Honeyman**, formerly with Ogletree Deakins, has joined the labor and employment team at Valero. Virginia is employment counsel for Valero's retail operations, providing legal advice and litigation management for retail employment matters.

**James Satel** has gone in-house with Valero. James was formerly with the law firm of Bracewell Giuliani.

### Special Recognition:

**Michael B. Clark**, EVP and general counsel of The Scooter Store and 2005 chapter president, received the Texas General Counsel Forum's 2007 Magna Stella Award in the "Major Litigation" category.

### Out and About:

**Carolyn Shellman**, CPS Energy, served on a panel entitled "The Heat is On: Managing the Challenges of Corporate Climate Change Strategies" at ACC's annual meeting in Chicago.

**Todd Silberman**, Express Carriers, was also a speaker at ACC's annual meeting in Chicago. He served on a panel entitled "Insurance Insights: Practical Issues That Affect Your Company's Day-to-Day Business."

## Don't Miss

We continue to hold our monthly luncheons on the first Wednesday of the month from 12:00–1:30 PM at the San Antonio Plaza Club. The cost to attend the luncheons is \$10.00 for members and \$18.00 for non-members.

(In-house counsel and sponsoring firms only, please.)

Check out our chapter webpage at [www.acca.com/chapters/sanant.php](http://www.acca.com/chapters/sanant.php) for our current calendar of events and registration information.

No other professional organization in San Antonio offers better CLE programs at a more affordable price that is specifically geared to meeting the needs and issues of in-house counsel.

**Wednesday, January 9th, 2007:** "An Ounce of Prevention is Worth a Pound of Cure" Practical steps in-

house counsel can champion to reduce the risks and costs email and electronic information represents to the business. Sponsored by Jordan Lawrence Group.

- Turning a 26(f) Conference into a strategic opportunity
- Minimize the impact records retention will have on your liability and D&O premiums in 2008
- Safeguarding against privacy breeches and their related costs
- Reduce IT costs to support discovery

RSVP to Amber S. Clark, Executive Director, by email at [accasouthcentral@yahoo.com](mailto:accasouthcentral@yahoo.com), or by telephone at 830.336.2049.

## Welcome New Members

### Curt Brockmann

CPS Energy  
(8/1/2007)

### Jeffrey Bryan

Valero Energy Corporation  
(8/1/2007)

### William Davis

Valero Energy Corporation  
(9/1/2007)

### Anthony Fetter

Zachry Construction Corporation  
(9/1/2007)

### Ronald Given

Argonaut Group, Inc.  
(8/1/2007)

### Virginia Honeyman

Valero Energy Corporation  
(9/1/2007)

### Gilbert Mathews

Lucifer Lighting Company  
(9/1/2007)

### Johnny Miller

Peterman Consulting Associates LLC  
(10/1/2007)

### Serina Rivela

Bexar Metropolitan Water District  
(10/1/2007)

### Adolfo Ruiz

Bexar Metropolitan Water District  
(10/1/2007)

### Angela Sanchez

Valero Energy Corporation  
(9/1/2007)

### James Satel

Valero Energy Corporation  
(8/1/2007)

## Follies Full of Razzle Dazzle: Our Chapter's 10th Annual Ethics Conference

By Lee Cusenbary, San Antonio Chapter Immediate Past President

When I was walking out of the Plaza Club last night after the Cast Party from Ethics Follies 2007, I noticed big wedges of left over cake in clear "to go" boxes. They were from the 10th Anniversary Cake for the event's attendees. CPS attorney and diva, Kathy Yates, was carefully cutting up sections of cake and putting them in the plastic containers, carefully keeping her huge wig from brushing against the white icing. "We're freezing that one," she said, pointing to the large wedge with a food coloring ink-jetted picture of a bad Elvis Impersonator on it. "We'll break it out for next year's Cast Party." She was unscathed by the fact I had just moments ago called her "an ignorant slut" in front of the entire audience of the Follies, in the rich tradition of Dan Ackroyd and Jane Curtain. I knew right then that the show had been a success when the cast is already thinking of next year's show when the bowler hats and boas were still warm.

By "success," I don't mean that we had a sold out audience, even though there was. Many nice people said that they thought it was the "best CLE conference they had been to," but that's not what I'm talking about. What I mean by "success" is that our goal was met. The mission of the Association of Corporate Counsel's Ethics Conference is to bring ethical discussions and issues to the chapter membership by engaging the members in a cooperative effort of putting on a musical revue. The brainstorming, writing, producing, rehearsing, and related merriment (often including wine and beer) allows for the in-house attorneys to get to know one another and to network. It also provides the membership an entertaining way to get all three required ethics CLE hours.

continued on page 8



## continued from page 7

The Follies production process, now in its second year, has become a way to reach the goal of both raising awareness of ethical issues and getting the membership to know one another. We succeeded in this mission, and the cast is already planning next year's show. As the chair of this fun even, I felt particularly satisfied, and picked up a piece of cake to take to my kids, leaving the one with Elvis on it for the deep freeze.

Jimmy Allison, the executive director of SABA, is going to market the ethics conference as a video CLE through his bar association contacts around the US. Fawn Mountain Productions filmed the three hour event to provide Jimmy with the DVDs for distribution. The DVDs are also available for direct purchase from Amber Clark, the Executive Director of ACC at [accasouthcentral@yahoo.com](mailto:accasouthcentral@yahoo.com).

Highlights of the November 2nd conference are Mary Doggett as Glenda the Good Witch from "Wicked" singing "Unpopular;" "In House Tango," from the musical Chicago, where we learn that one woman's (my wife, Teri Hospers) surprise that her irritating husband "ran into my knife! He ran into my knife, TEN TIMES!; former Judge Rene Diaz as an Elvis impersonator who bedazzles women in curlers in "Ethical Dropout" from Grease; Lamont Jefferson's Razzle Dazzle swagger; the men "Steppin' to the Bad Side" in four part harmony; Cynthia Smith singing a Faust selection beautifully; Richard and Carolyn Larson as Fred and Ginger, with "Let's Call the Whole Foods Off;" and the dead on Toby Keith impersonation by Bobby Falkenberg, accompanied by his wife Faith.

Arbitrator George Brin wowed folks again this year with a six minute poetic comedic saga about Gorilla Glue. Bob Leckie surprised me with a comedy bit, that reminded me of another Canadian, Buck Henry. The bit made fun of me as the show's director, but was a bit of comic genius due to Bob's impeccable comic timing. I do take some credit since I am such a big target for parody. I was reminded by those standing nearby that mockery is flattery. Sure, I'll buy that.

Since this year's Follies sort of outgrew the Plaza Club, it has been suggested that the ACC chapter join forces with the San Antonio Bar Association and make "Ethics Follies 2008" for all the attorneys in the San Antonio Bar on one great evening of open bar, great food, and good friends. We could even through some parodies of local attorneys in there for fun. There are similar events in Houston and Dallas for attorneys and their spouses that are looked forward to each year. Maybe lease the Majestic for an evening. Currently, Ethics Follies tickets are only available for judges, in-house attorneys, and sponsoring firms. Think about whether you would be interested in a city wide event sponsored by ACC and the SABA, bringing in-house attorneys and the SABA together once a year for a musical evening that also fulfills your Texas ethics requirements painlessly. If so, let Jimmy Allison ([jimmya@sabar.org](mailto:jimmya@sabar.org)) or I ([lcusenbary@missionpharmcal.com](mailto:lcusenbary@missionpharmcal.com)) know what you think. It could be a heck of a time and you would have all your ethics credits for the year in one painless evening of music and good friends.

# We hit the bull's-eye for employers.



**FULBRIGHT**  
FULBRIGHT & JAWORSKI L.L.P.

FOR LABOR AND EMPLOYMENT LAW ASSISTANCE  
IN AUSTIN                      IN SAN ANTONIO  
512/474-5201                      210/224-5575  
[WWW.FULBRIGHT.COM](http://WWW.FULBRIGHT.COM)

## More Ethics Follies Photos



## Thank You Ethics Follies 2007 Sponsors

### Diamond:

Fulbright & Jaworski  
Jackson Walker, LLP

Bracewell & Giuliani, LLP  
Corporation Service Company, Inc.  
Kinetic Concepts, Inc.  
Ogletree, Deakins, Nash, Smoak &  
Stewart, P.C.

Henslee Schwartz, LLP  
Oppenheimer, Blend, Harrison & Tate,  
Inc.  
Shelton & Valadez, P.C.  
The Frost National Bank

### Platinum:

Cox Smith Matthews, Inc.  
Haynes & Boone, LLP  
IE Discovery, Inc.  
Prichard, Hawkins, McFarland &  
Young

Prescott Legal Search  
Strasburger & Price, LLP  
Valero Energy Corporation  
XCEL Document Solutions

**Cast Party:**  
LexisNexis

### Gold:

Akin, Gump, Strauss, Hauer & Feld,  
LLP

### Silver:

Clear Channel Communications  
H.E.B.

## After the Interview: Mastering the Transition From Your Current to Future Employer

### (Part III of a Three Part Series)

By Morgan M. Matson, President Preferred Counsel

Your call back interview is over. You've aced the second interview and an offer is forthcoming. If you are fortunate enough to be in such a position, how should you conduct yourself, post-interview? Further, should you choose to accept the offer, how and when should you communicate your resignation to your current employer? This article addresses the protocol in these circumstances.

(1) The work's not done yet... If you left your interview feeling like the job is yours, don't rest on your laurels. You concluded the interview on a positive note by expressing your interest in the position and thanking the HR manager for his/her time. Now, you need to remain present in the minds of the decision makers and those that interviewed you. Do this by immediately sending individual thank-you notes. Bestselling author, Harvey Mackay famously said "Anyone too busy to say "thank you" will get fewer and fewer chances to say it."

Treat the thank you as part of the interviewing tools you have used during your previous interviews. Don't hastily scribble out something. The note should communicate your appreciation for the person's time, express your interest in the position, and illustrate (briefly) why you are the right person for the job. The reader should be left knowing that you understand the company and the department's short and long term goals. Be sure to make each letter genuine and unique. If it appears that your thank-you letters are "cut and paste" jobs, your sincerity will be diminished. Make sure the notes are sent timely; more than 3 days is too late. This technique also demonstrates your communication and relationship-building skills. Although e-mailing a thank you is acceptable, a handwritten note makes the best impression. Whichever way you choose, you want to demonstrate that you understand the corporate culture.

(2) Rally the troops. By this point, you will likely have provided the prospective employer with references. Be sure to call each reference and let them know to expect a call from the company with whom you interviewed. During this conversation, describe the position you are seeking along with relevant responsibilities and required skills. This will give the reference time to think about what to say when called.

(3) Stay in touch, but don't be a stalker. Recognize that you and the company will likely have different timeframes in the hiring process. While it is your responsibility to keep the lines of communication open, there is a very fine line between being diligent and becoming a pest. Upon conclusion of the interview, you should have a clear idea of a timeline when the company will get back to you and who you can call if you don't hear back by that date. Any follow-up before then (other than the thank-you letter) can be viewed as annoying or desperate. To help keep over-eagerness at bay, have a waiting strategy. First, keep your job searches going. Not only will this help you pass time, it will also prevent you from having to start a job search from scratch should an offer not be forthcoming. Second, immerse yourself in your current work or extracurricular activities. The point is to distract yourself such that you don't fall victim to repeated contacts with the company.

(4) Avoid over-negotiating the offer. Although beyond the scope of this article, approach a job offer on a good faith basis. Remember, these are the people you will be working with so don't be heavy-handed. I recall one candidate who thought he needed to negotiate the offer to "prove" he was a good negotiator. Well, he negotiated himself out of the offer as the company was insulted and they promptly withdrew it. Additionally, if you are successful in negotiating a higher pay package than your peers, you are susceptible to being the first to be let go in a layoff.

(5) Once you receive the offer, be sure that all contingencies (e.g. background checks, conflicts, etc.) are satisfied before announcing your resignation. Stories abound of individuals who quit their current position only to learn of a conflict that could not be resolved. Resignation is a bell that cannot be unring.

(6) Prepare for the counteroffer. The counteroffer is one of the most stressful aspects of a successful job search. Your resignation should be short and definitive; leaving the door open invites this uncomfortable, often guilt-ridden, discussion. Explain you have enjoyed the time with the company but you have made this decision and are now looking forward to the opportunity that awaits. Be positive about your current employer but be clear in your decision. Nonetheless, your employer may extend a counteroffer. In that case consider the studies which show that 90% of employees who accept counteroffers leave within 1 year. Remind yourself why you wanted to leave in the first place. Those that accept a counteroffer frequently find it is difficult to complete their job because they are no longer part of the team or the inner circle. Your motives, judgment, and thought process will be second-guessed. Once a counteroffer is accepted, it is not unusual for a company to begin planning for your replacement, only this time on their timeframe. Ask yourself if you will need to quit again to receive the recognition, platform,

salary, etc. you deserve. While flattering, a counteroffer is rarely about you. Instead, it is about what's best for the company, so don't be fooled. Continue forward with the new position and don't look back.

(7) Submit a short, positive, and courteous resignation letter. It should be something you would feel comfortable having others read and that leaves no room for negotiation. Remember, in these days of mergers and acquisitions, you may find yourself working with these individuals again and you do not want to have acted unprofessionally. If you have acted with honor and dignity, you may have the option of returning to the company later on or working with others in a different capacity later on.

If you apply these tips, you will be able to start a new chapter in your professional life without burning bridges and without creating unnecessary waves with your new employer. In so doing, your transition will be more exciting as you focus on your new position without unwanted distractions.

*After litigating for six years, Morgan M. Matson entered the world of professional headhunting. He is President of Preferred Counsel, a San Antonio based legal staffing firm specializing in attorneys and legal professionals. He can be reached at 210.558.2828, or [mmm@PreferredCounsel.net](mailto:mmm@PreferredCounsel.net).*

## A Lawyer's Christmas Greeting

Please accept with no obligation, implied or implicit, our best wishes for an environmentally conscious, socially responsible, low stress, non-addictive, gender neutral, celebration of the winter solstice holiday, practiced within the most enjoyable traditions of the religious persuasion of your choice, or secular practices of your choice, with respect for the religious/secular persuasions and/or traditions of others, or their choice not to practice religious or secular traditions at all . . . and a fiscally successful, personally fulfilling, and medically uncomplicated recognition of the onset of the generally accepted calendar year 2008, but not without due respect for the calendars of choice of other cultures whose contributions to society have helped make America great, (not to imply that America is necessarily greater than any other country or is the only "AMERICA" in the western hemisphere), and without regard to the race, creed, color, age, physical abil-

ity, religious faith, or choice of computer platform.

By accepting this greeting, you are accepting these terms. This greeting is subject to clarification or withdrawal. It is freely transferable with no alteration to the original greeting. It implies no promise by the wisher to actually implement any of the wishes for her/himself or others, and is void where prohibited by law. It is also revocable at the sole discretion of the wisher.

This wish is warranted to perform as expected within the usual application of good tidings for a period of one year, or until the issuance of a subsequent holiday greeting, whichever comes first, and warranty is limited to replacement of this wish or issuance of a new wish at the sole discretion of the wisher.

The wishee further agrees to hold harmless and indemnify the wisher, along with its heirs, assigns, officers, directors, shareholders...

## English-Only Policies



By Tiffany L. Hawkins,  
Strasburger and Price, LLP

One result of the increasing diversity of America's workforce is that employees are more likely to communicate in the workplace through languages other than English. In light of this situation, some

employers try to adopt across the board English-only policies. But, mandating that all employees use English for all workplace communications is rarely justified and will probably result in repeated claims of national origin discrimination under Title VII. Accordingly, employers should be aware of the limitations placed upon English-only policies and keep such limitations in mind when considering the use of, and actual implementation of, an English-only policy.

### By the Numbers ...

According to the 2000 U.S. Census Bureau Report, approximately 47 million Americans spoke a language other than English.<sup>1</sup>

- Of that number, nearly 11 million either did not speak English at all or did not speak English very well.<sup>2</sup>
- Spanish is the most common non-English language spoke in the U.S.<sup>3</sup>
- The most recently reported numbers for the Equal Employment Opportunity Commission ("EEOC") indicate that approximately 228 charges were filed challenging English-only policies in 2002. This number represents a more than 600 percent increase from 32 filings in 1996 when the EEOC first began tracking claims regarding English-only policies.<sup>4</sup>

### Why English-Only May Be Viewed As Violating Title VII ...

As a general matter, Title VII prohibits employers from discriminating on the basis of national origin, which "means treating someone less favorably because that individual (or his or her ancestors) is from a certain place or belongs to a particular national origin group."<sup>5</sup> The EEOC takes the position that an across-the-board, English-only policy likely violates Title VII because language is so closely associated with national origin and requiring bilingual employees to speak only English at all times is a "burdensome term and condition of employment that should be closely scrutinized."<sup>6</sup> As such, the EEOC allows the adoption of English-only policies only for non-discriminatory reasons which are consistent with a "business necessity," such as in the following situations:<sup>7</sup>

- For communications with customers, co-workers, or supervisors, who only speak English
- In emergencies or other situations in which workers must speak a common language to promote safety
- For cooperative work assignments to promote efficiency
- To enable a supervisor who only speaks English to monitor the performance of an employee whose job duties require communication with co-workers or customers

#### EEOC Example of Permissible English-Only Rule

XYZ Petroleum Corp. operates an oil refinery and has a rule requiring all employees to speak only English during an emergency. The rule also requires that employees speak in English while performing job duties in laboratories and processing areas where there is the danger of fire or explosion. The rule does not apply to casual conversations between employees in the laboratory or processing areas when they are not performing a job duty. The English-only rule does not violate Title VII because it is narrowly tailored to safety requirements.<sup>8</sup>

### So, If You Still Want to Adopt An English-Only Policy ...

#### 1. Establish the Business Necessity

Identify and evaluate the specific concerns or purposes requiring the use of English only, such as reports of safety problems, comments from customers about lack of service, or complaints from employees that co-workers who speak a different language appeared to be commenting about them in such a way that they felt excluded or targeted. Gather documentation supporting these concerns or purposes. Evaluate whether your specific concerns or purposes can be achieved through means other than an English-only policy. Articulate your business necessity for adopting an English-only policy.

#### 2. Tailor the Policy to the Business Necessity

Remember — any English-only policy "should be applied no more than is necessary to get the job done well and to minimize friction between employees — beyond that, employees should be left to whatever language they prefer to use."<sup>9</sup> If, for example, the reason behind the policy is to improve customer service, there is no reason to prohibit employees with no customer interaction from speaking other languages; instead, limit the policy to those employees who deal with customers and to those periods of time during which those employees help customers. In addition, do not prohibit the use of other languages during periods of rest or break, as such a policy is not likely to have any conceivable business justification.

#### 3. Provide Advance Notice to Employees

Prior to implementing an English-only policy, all employees should be provided with advance notice of the policy,

including information on why the policy is being implemented, on what is or is not allowed, on who is affected by the policy, and on the disciplinary consequences for violations of the policy.

#### 4. Train Supervisors

A well-drafted policy is of little benefit to an employer unless its supervisors are properly trained on how to implement the policy. In reviewing violations, supervisors must use common sense in determining whether discipline is the appropriate response. While employees should be disciplined for intentional violations, accidental or unintentional violations may not even be disciplinary matters at all if, for example, an employee utters a few words in his native language during an emergent situation.

1. United States Census Bureau, *Language Use and English Speaking Ability*, at [www.census.gov/prod/2003pubs/c2kbr-29.pdf](http://www.census.gov/prod/2003pubs/c2kbr-29.pdf).

2. *Id.*

3. *Id.*

4. The U.S. Equal Employment Opportunity Commission, EEOC Compliance Manual: Section 13 – National Origin Discrimination, at [www.eeoc.gov/policy/docs/national-origin.html](http://www.eeoc.gov/policy/docs/national-origin.html)

5. 29 C.F.R. § 1606.1

6. 29 C.F.R. § 1606.7.

7. *Id.*

8. The U.S. Equal Employment Opportunity Commission, *supra* n. 4.

9. Texas Workforce Commission, *English-Only Policies*, at [www.twc.state.tx.us/news/eft/english\\_only\\_policies.html](http://www.twc.state.tx.us/news/eft/english_only_policies.html)