

## Peter Marchel President's Message

**Dear Fellow Washington ACC Members:**  
 Welcome to our first electronic newsletter. In an effort to provide better communication to our members, the board of directors has decided to distribute a quarterly newsletter.

The first order of business is to remind everyone that the National Conference will be coming to Seattle in 2008. This is the first time that Seattle will ever play host to ACC. This will be an opportunity for the Washington Chapter to show our peers who we are and what we can do, and will give us a great chance to draw new members as well as sponsors.

This year at the ACC Annual Meeting, we held a special reception for individuals interested in our chapter. We had a great group of people attend, many of whom expressed an interest in getting more involved in the chapter activities in the coming year. I would like to call on each member of the chapter to get more involved in 2008. If you have not been to a chapter event in 2007, please try to make one in 2008, and if you attended an event in 2007, try to attend two in 2008. If you have attended a few events, offer to assist in putting on an event, and invite other in-house counsel that you know. We are looking for many of you to participate in helping us set up an event, these tasks can be as simple as contacting potential sponsors, or offering your place of business to host an event. We are looking for your

ideas for different and innovative programs, and are looking to you to share your passion in these areas with the chapter.

As part of our effort to encourage participation and create new ideas for our chapter, we want to thank everyone who participated in our first membership survey. We received 44 responses. Some of the results were:

- 1) Members were evenly split between meeting monthly and every other month; we will more than likely schedule 8 to 10 events in 2008.
- 2) A majority (55.8%) wants to meet in downtown Seattle, with the Eastside coming in second at (32.7%); we will try to have at least one event on the Eastside.
- 3) We will continue various meeting formats; from breakfast meetings to lunch, as well as after hours events and dinner.
- 4) We will continue to provide the following programs:
  - a. Educational programs
  - b. Networking programs
  - c. Career Development/Management programs
- 5) The following topics were of the greatest interest with our members:
  - a. General Counsel Forum, Various Topics
  - b. Corporate governance/Law Department Management
  - c. Contract Drafting/Review Issues
  - d. Intellectual Property Issues
  - e. Privacy Issues

- f. Record Retention
- g. International Transactions
- h. Employment Law
- i. Career Management/Transition Issues
- j. Internet/Ecommerce

The highlight of the survey was the level of interest that we received from many chapter members wanting to participate. We will follow up with everyone that expressed such an interest.

As we wind down 2007, we want to remind you to please mark your calendar for our December Ethics Holiday Diner which will be held on December 10 at the Columbia Tower Club. Our guest speaker will be Susan Hackett, general counsel of ACC. Additional information will be provided as we get closer to the date of the event; please check our website.

I look forward to meeting and working with you in the coming year.

Sincerely,  
 Peter Marchel

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## Discover Best Practices from ACC's Annual Meeting

*Susan Hackett,  
Senior Vice President and General 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).

# Board Member Spotlight



*In each newsletter we will be ‘spotlighting’ one member of the board so everyone can get to know the individuals that are helping build our chapter. This newsletter spotlights the vice president and chapter treasurer, **Susan Ephron** of Safeco Insurance.*

## How long have you been working in-house?

I have been in-house since 1996. My first in-house position was with Nintendo of America. I now work for Safeco Insurance. For both, my primary responsibility has been to manage the defense of litigation filed against the company.

## What is your favorite part about working in-house?

My favorite part about working in-house is having the abil-

ity and the responsibility to think strategically when working with the business people and outside counsel on litigation issues.

## What legal topics are you most interested in?

Anything having to do with litigation interests me. I find ediscovery disputes especially fascinating, although I hope I am never in the middle of one.

## Fill in the blank: My favorite part about being involved in the Washington Chapter of the ACC is...?

...getting involved in the legal community and meeting other in-house attorneys that face many of my issues.

## When you aren't working, what are your favorite hobbies?

I'm either riding my bike or cooking and drinking wine.

# Chapter Accomplishments and Accolades

Our chapter board member Mr. Richard Gordon of Time Oil Co., gave a two week seminar at Peking University Law School in Beijing, China entitled “The Development of Environmental Law and Practice in the US —A Practical Primer.” About the experience, Mr. Gordon said, “I was treated like royally by the faculty, staff, and students at the Law School, and am still marveling over the food.”

Our chapter board member Mr. Johann Thaheld of Mobilisa, presented at the ACC National Conference in Chicago, Illinois. Mr. Thaheld, along with two other individuals gave a presentation entitled “Intellectual Property: Doing Business on the Web: Internet Trademark & Copyright Issues.”

Our chapter vice president treasurer, Ms. Susan Ephron of Safeco Insurance, was a co-leader of the “Safeco Street Law Program,” in which lawyers and legal staff at Safeco brought the law to 40 students at West Seattle’s Chief

Sealth High School. As part of Street Law’s Corporate Diversity Pipeline Program, the volunteers visited the school to teach the basics about tort litigation and sexual harassment, then invited the students to a “Law Day” event where they participated in a mock trial, mock hearing, and other workshops. Ms. Ephron played the role of judge (complete with black robe and gavel) in the mock trial. The Diversity Pipeline Program is a collaboration between Street Law, a non-profit involved in educational outreach to students interested in learning more about law, civil rights and democracy, and ACC. It partners corporate legal departments with nearby diverse, high school law classes in an effort to engage the students, teach them more about civil law, and encourage them to consider careers in the legal profession. The program sets out to achieve these objectives through three program components: classroom visits, a conference at the corporate headquarters, and program extensions for the most promising students.

# Chapter Photos and Events

2007 isn't even over yet, and we have already had an exciting year in our chapter. Some of the events that have taken place include:

**“What every GC needs to know about IP,”** a lunch CLE presentation hosted by Stoel Rives LLP, with presentations by Seann W. Hallisky and Samuel E. Webb both of Stoel Rives.

**“Reducing Antitrust Risks in Pricing Decisions: The Evolving Landscape of Pricing Cases,”** a CLE presentation and cocktail reception hosted by Heller Ehrman LLP, with presentations by Rima Alaily, Leonard Feldman, and Scott Westrich, all of Heller Ehrman.

**“Money and Influence in Washington: How the Rules are Changing,”** an afternoon CLE presentation and cocktail reception hosted by Perkins Coie Seattle Office, with presentations by Robert F. Bauer and Vickie L. Wallen, both of Perkins Coie.

## New and Improved Chapter Website

Our chapter launched its new and improved website on August 1, 2007. It is our mission to use our website to continually provide updated information about upcoming events, chapter board members, volunteer opportunities, and pictures of recent events. Stop by and take a look at: [www.acc.com/chapters/wash.php](http://www.acc.com/chapters/wash.php).

## Blue Ribbon Cooking School

On September 20, 2007, our chapter held its third annual Social Event at the Blue Ribbon Cooking School located on Lake Union in Seattle. Dorsey Whitney and Lexis Nexis co-sponsored the event. An Iron Chef cook-off was held amongst those participating. While the competition was close, the “sliders” won the taste competition and the stuffed shrimp with the tortilla wrap wonton won the best presentation. Great food, great wine, and great company made for a fun-filled evening. Everyone is already looking forward to next year's cooking event!



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## Special Reception: ACC Annual Meeting

Each year our chapter hosts a special reception that is held during the ACC Annual Meeting. It is a great opportunity to meet new faces and to discuss the events taking place during the Annual Meeting. This year the special reception was held on October 29, at Vivo Restaurant in Chicago.

We are already looking forward to our special reception for next year—it will be very special since we are the host city!

## Upcoming Events

For more information on upcoming chapter programs, go to [www.acc.com/chapters/wash.php](http://www.acc.com/chapters/wash.php)

### **CLE Ethics Dinner**

**Monday, December 10, 2007**

**Time TBD**

Our chapter will be hosting our annual Ethics dinner at the Columbia Tower Club in Seattle. This year's speaker will be Susan Hackett, general counsel of the ACC. Ms. Hackett's presentation focuses on helping in-house counsel understand and prepare to meet the challenges of "gate-keeping" in the post-Enron prosecutorial environ-

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Discussion topics will include strategies, concerns, and best practices, and a re-examination of how gate-keeping sometimes fits and sometimes causes frictions with your professional and ethical roles and responsibilities as a lawyer.

Please join us for a wonderful evening of food, socializing, and a great presentation! A formal invitation will be sent out soon, but please contact our chapter administrator Lynda Jonas at [ljonas@legalease.com](mailto:ljonas@legalease.com) with any questions you may have. Hope to see you there!

## ACC Annual Meeting 2008 in Seattle Washington

October 20–22, 2008

Washington State Convention and Trade Center

With 2007's annual meeting in the books, it is time to look forward to 2008. We are thrilled that the annual meeting will be hosted in Seattle next. It will be a great opportunity to attend some interesting presentations, and to be able to meet other in-house attorneys from across the nation. More information to follow.

## 2007 Diversity Scholarship

For the past three years, our chapter has been funding Diversity Scholarships at the three Washington law schools—Seattle University School of Law, University of Washington Law School, and Gonzaga University Law School. Each law school selects one diverse student that has a significant financial need, record of academic achievement, and a demonstrated interest in increasing diversity in the legal community. Over the years these scholarships have gone to a diverse group of students, including: a first-year student at the University of Washington who is a first generation Mexican immigrant and plans on getting a concurrent degree in law and masters in education, and a third year student at Gonzaga University who is an immigrant from Taiwan. The scholarships enable students to focus on their studies, rather than how to finance them. The hope is that these scholarships will help increase diversity in the legal profession and better reflect the diverse communities in which we live.

Throughout the year, in conjunction with the scholarship, our chapter participates in law school career panels and mentoring. Each year, the scholarship recipients are invited to our annual ethics dinner. The 2007 Diversity Scholarships will be awarded later this year.

**Have a question about the Washington Chapter?** Interesting in joining our legal community? Please feel free to contact any one of our board members with any questions you may have. We would be happy to talk with you and encourage you to join. Our chapter is always accepting new members!

**Have an idea for our next newsletter?** Feel free to contribute! Please email questions or submission requests to [heather.deranek@onrequestimages.com](mailto:heather.deranek@onrequestimages.com).