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FOCUS

President's Message

Brenna Nava, Corporate Counsel, Rackspace Hosting

Fill Your Life With Experiences.

They say to “Fill your life with experiences, not things. Have stories to tell, not stuff to show.” My family put these words into action this year at Christmas when we gave out what we call “experience” gifts. My kids already have all the toys they need and spend too much time on electronic devices. So, we wrapped tickets to a game, movie, and trip with family and friends. Our family had a blast and we created memories that will last a lifetime. It was an opportunity to put aside holiday errands, cherish all the great moments in 2017, and connect.

2017 was a fabulous year and I enjoyed sharing so many wonderful experiences with each of you. As I step in to take over the Presidency from Wes Sharples, I have some big boots to fill. Some of the highlights from this past year include:

- Our Chapter won the 2017 “Innovative Programming Effort” award for Ethics Follies.

- We also won the 2017 Chapter of Distinction Award which recognizes the chapters that receive over 85% achievement in the following areas: governance/operations; membership; recruitment; programming; awards/recognition programs; and scholarships/pro bono work.
- It was the inaugural year for our second successful shared interest group – the Women’s Interest Network (“WIN”).
- We contributed numerous volunteer hours and \$25,000.00 to various organizations that meet our charitable giving guidelines, including the Harvey Related Relief fund.

In 2018, we will continue to offer timely and practical CLE at our monthly luncheons and round table events. We will also offer evening community service and other networking/social opportunities. We have included a brief description of



each of our committees. Let us know if you are interested in joining. Also, if you have suggestions for a shared interest group, like a healthcare or fine arts appreciation group, give me a call. We are always looking for fresh ideas.

Finally, I would like to encourage all of you to experience the ACC’s Annual Meeting in Austin in the fall. We will provide more information as we draw near the date of the event but please feel free to connect with me if you have any questions. Early Bird registration ends on March 28, 2018.

This next year, I hope to connect with more of you. If I have not met you, please send me an email or stop me the next time you see me. I know all of our board members would be happy to chat or meet with you over lunch or coffee. I look forward to sharing new experiences with all of you!



ACC Holiday Party

CHAPTER COMMITTEES-WOULD YOU BE INTERESTED IN VOLUNTEERING?

We are always looking for volunteers to help with our various committees and activities. Please let us know if you would be interested in volunteering a small amount of your time to help keep our chapter running strong. We will work with you to line you up with a project that interests you! Below is a list of our current committees and their chairpersons. Contact Amber Clark, Brenna Nava, or any ACC board member for more information.

Below is a list of our current committees. Contact Amber Clark, Brenna Nava, or any ACC board member for more information.

- 1. Membership.** The Membership Committee is responsible for identifying potential new members and improving relationships and engagement with existing members. Committee members serve as ambassadors for the ACC. The Chair of the Membership Committee takes new and/or potential members to lunch or coffee to discuss the benefits of membership.
- 2. Charitable Giving.** The Charitable Giving Committee reviews all charitable requests made to the ACC South Texas Central Chapter. This Committee also designates a scholarship recipient for the proceeds from our annual golf tournament.
- 3. Community Outreach.** The Community Outreach Committee is responsible for highlighting the ACC in the community by participating in panel discussions at local universities and St. Mary's Law School. This Committee also works with the CJP to host veteran's clinics where members can earn pro bono hours or volunteer with local non-profit companies like the SA Food Bank.
- 4. Ethics Follies.** The Ethics Follies Committee works with Lee to ensure a successful Follies program each year. Volunteers for this committee help with sponsorship solicitation, attendance promotion, props and set assistance, table setup, ushering, CLE sign-in, and post-show receptions.
- 5. Ethical Life Awards.** The Ethical Life Awards Committee is responsible for soliciting nominations and assembling a panel of judges to select the annual Ethical Life Award recipient. The Ethical Life Award is presented during the evening Ethics Follies performance.
- 6. Golf Tournament.** The Golf Tournament Committee is responsible for coordinating the annual golf tournament. Volunteers for this committee may help with sponsorship solicitation, golfer registration and other general tournament details. A portion of the proceeds from this fundraising activity go toward a different scholarship that is selected by the Charitable Giving Committee each year.
- 7. Roundtable and Programming.** The Roundtable and Programming Committee works with our top tier sponsors to present at least two breakfast or early afternoon/evening CLE presentations on interesting and unique topics.
- 8. Running Club Committee: Team "ACCELERATE".** The Running Club Committee is responsible for identifying and coordinating teams for various races throughout the year and for soliciting sponsorships for those races.
- 9. Oil and Gas Shared Interest Group.** The Oil and Gas Committee secures and works with law firm to deliver CLE presentations on oil and gas topics.
- 10. WIN [Women's Interest Networking] Shared Interest Group.** The Women's Interest Networking (WIN) Committee partners with attorneys and vendors to provide several continuing education, professional development, and networking opportunities for women.
- 11. Foodie Fridays/Thirsty Thursdays.** The Foodie Fridays/Thirsty Thursdays Committee is responsible for setting up several informal networking "Dutch treat" networking lunches or happy hours at fun local restaurants and bars.
- 12. Social Events.** Coordinate social events, including annual family event; holiday party, golf tournament happy hour and Ethics Follies after party.

Is Your ACC Member Profile Up-To-Date?

You may edit/update your contact or personal information, etc. by logging into www.acc.com and selecting "My ACC." Then click on "My Contact or My Personal Info." Scroll to the bottom of your profile and click on "Edit My Info." It's that easy!

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 our Chapter Executive Director at southcentraltx@accglobal.com.

2018 ACC Chapter Board of Directors



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PAST PRESIDENTS:

Monica Trollinger (2016) Kathy Yates (2015) Rich Reynolds (2014) Mike Gibbs (2013) Dan Lopez (2012) Kelli Cubeta (2011), Ingrid Etienne (2010), Kay L. Grimes (2009), Diane Hirsch (2008), Reagan S. McCoy (2007), Lee Cusenbary (2006), Michael B. Clark (2005), Mary Brennan Stich (2004), Linda Drozd (2003), Todd Silberman (2002), Becky Rainey (2001), Richard Reed (2000), Carol Morrow (1999), Jerry King (1998), Stan McCormick (1997), Bruce Clements (1996), Merrie Cavanaugh (1995)

Save the Date!
Friday, April 13th
ACC's 6th Annual Charity Golf Tournament & Social
Quarry Golf Club
11:30 Registration & Lunch
1pm Tee Time
5:30pm Happy Hour
Foursome- \$600
Hole Sponsor- \$1,000

April 13, 2018

Association of Corporate Counsel
SOUTHCENTRAL TEXAS
southcentraltx@accglobal.com



Association of Corporate Counsel
SOUTHCENTRAL TEXAS

MARCH 22, 2018

ACC SPRING THIRSTY THURSDAY
& ACC Global Membership Event

INTRODUCING ACC'S SPRING THIRSTY THURSDAYS!

We will be organizing a "Thirsty Thursday" meet up in the Spring months of 2018. Our first Thirsty Thursday will take place on Thursday, March 22nd, at Tiago's Cabo Grille at the Rim- 17711 IH 10 West #101, between Bass Pro Shop and Palladium- beginning at 4:30pm. Please join ACC Chapter President, Brenna Nava, (Rackspace) and some of your other ACC colleagues for a fun and relaxed "Dutch treat" happy hour get-together!

March is also ACC's Global Membership Month!

Bring a prospective new member and the first drink for you and your guest is on ACC!

RSVP: to Amber Clark at southcentraltx@accglobal.com

THIRSTY THURSDAY!

ACC GLOBAL MEMBERSHIP MONTH EVENT

ACC SPRING HAPPY HOUR AROUND TOWN

DUTCH TREAT

COCKTAILS, FUN & FRIENDS!

Tiago's
Voted Best Happy Hour

Building a Better Team: Chief Legal Officers as Talent Management Leaders

By Ramsey Robert Saleeby

The role of the Chief Legal Officer (CLO) is ever expanding with increased responsibility for both legal and business functions. However, as CLOs secure and maintain their seats at the executive and board tables, it is imperative that they continue to assess and develop the talent of their legal departments. Talent management and development remains high on the priority list for legal departments of all sizes because it plays an integral role in the efficiency and longevity of the department.

Assessing Talent in A Legal Department

Before venturing to explore strategies for developing talent within a legal department, CLOs must assess the department's current talent landscape. After all, it would be impossible to determine the needs of a legal department before first determining the status quo. There are a number of strategies for talent assessment, and CLOs must adopt a methodology that best suits their department. However, irrespective of the exact approach, it is important that it be proactive in nature. A proactive approach is demonstrated by having direct involvement in assessing talent, rather than waiting for deficiencies in skills to surface. This approach allows legal departments to assess whether they require new hires to fill in skill gaps or whether to develop current staff. Further, a proactive approach, although time consuming and sometimes costly, enables a more efficient realization of department strategy.

Internal Methodical Assessments

Internal assessments are critical in measuring the performance of each member of the legal department. One approach mentioned at the 2017 ACC Annual Meeting CLO Roundtables (Roundtables) involved implementing an evaluation comprised of an objective



nine-block assessment. The assessment identified “star performers,” mid-level performers who require professional development to fill in skill gaps, and lower-end performers. Interestingly, star performers are sometimes lulled into a sense of a security and dropped to mid-level performers. Further, some mid-level performers are motivated to learn new skills that empower them to become star performers.

Another approach of note discussed at the Roundtables is defining roles in three dimensions. The first dimension is organizational or functional. This involves identifying technical expertise, for example, litigation or intellectual property. The second dimension involves identifying skills that align with the department's strategic outcomes, such as the implementation of artificial intelligence to boost productivity. The third dimension involves assessing other skills that the team may require, such as a second language or leadership experience. This approach offers both an objective and subjective approach and lends itself to legal departments of all sizes.

Partnering with HR

Another approach to assessing talent involves partnering with the human resources department. CLOs can collaborate with HR to conduct personality assessments, for example. The results of the personality assessments would then be taken into consideration when making decisions regarding an individual's role in the legal department's overall strategy. Although this approach does not offer a comprehensive methodology to assessing talent, it can serve as an effective complement to other processes.

Feedback by Internal and External Stakeholders

Although not necessarily methodical, feedback from internal and external stakeholders can be an effective tactic for assessing talent in legal departments of all sizes. Using feedback as an assessment is particularly effective when paired with the methods described above. Feedback from colleagues within the legal department, stakeholders from business units within the organization, and external stakeholders, such as

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clients, can be collected to help paint a picture of the talent landscape. Some CLOs have asked whether feedback from outside counsel might also be helpful. Generally speaking, this approach may be problematic given that outside counsel may hesitate to provide a complete and candid assessment of performance.

Developing Talent and Filling in Skill Gaps

Once the CLO has successfully mapped the talent landscape of the legal department, the CLO can then begin to manage that talent. One of the largest impediments a CLO will face in this regard is that raised by flat organizations, or departments with very little turnover and a significant legacy staff. This impediment is bolstered with millennials being hired to fill junior positions, while legacy staff, with low turnover, occupy mid to senior level roles.

Furthermore, CLOs must ensure that developing soft skills is a component of their talent development initiatives. One participant of the Roundtables noted that technical expertise was a “given,” and that soft skills were the chief differentiator. In other words, technical expertise is required, but not sufficient, to excel in an in-house legal department.

How can leaders of legal departments develop talent, including soft skills, with little to no opportunity for vertical mobility?

Short-term Projects

Most CLOs attending the Roundtables noted their use of short-term projects to develop talent. These projects were sometimes non-legal in nature in order to develop soft skills and increase familiarity with the various business functions of the organization. One example was creating a team of attorneys from various legal functions to prepare the organization for compliance with the upcoming EU General Data Protection Regulation. This three-month project developed not only technical skills, but also soft skills by encouraging collaboration within a

newly created team. Another participant identified a skilled attorney with poor interpersonal skills and who frequently garnered negative feedback. The CLO created a team of individuals across the organization outside of the legal department led by this attorney. The team was assigned to tackle a non-legal issue. Interestingly, the attorney thrived and feedback from other team members was overwhelmingly positive. These opportunities for short-term, ad hoc projects invigorate the legal team and drive professional development.

C-suite and Board of Directors

Involving attorneys in C-suite and board activity is another effective tool for talent development. This can include preparing or giving a presentation to board committees or contributing to executive level projects. CLOs at the Roundtable noted that this approach instills confidence in attorneys, offers an opportunity to provide constructive feedback, and exposes attorneys to the skills required for aspiring CLOs.

Rotations/Cross-training

Another method to keep employees motivated and develop talent is the use of rotations and cross-training, whether vertical, lateral, or outside of the legal department. For example, CLOs can move an attorney with real estate expertise to the licensing department. Furthermore, some participants of the Roundtable went so far as to have attorneys work in business functions to expose them to different facets of the business.

A Global Perspective

For those operating within a global legal function and/or an international company, placing talent in regional offices around the world is highly recommended. Exposure to different cultures, environments, and challenges in a deliberate manner is an excellent development tool; however, people mobility and language requirements may be a hindrance.

Moving On

There will be situations in which there are simply no further opportunities for developing a member of the legal department. In a flat organization, in which there is no room for vertical mobility in the foreseeable future, the best option available to a CLO may be to facilitate the transition of that member to a more a senior role in a different organization. This indirectly raises the profile of the legal department as one that goes above and beyond in talent and professional development, thereby attracting top new talent.

Conclusion

There are a number of different approaches that CLOs can employ to assess and develop talent within their legal department. A proactive approach, leveraging both objective and subjective criteria, is critical to ensure the continued success of any legal department.



Ramsey Robert Saleeby is the Assistant General Counsel & Senior Manager of Program Development, with a focus on CLO programming, for the Association of Corporate Counsel (“ACC”). Thank you Joseph Z. Ayanian, Program Development Coordinator, for your research and help in drafting this article.

ACC News

Go Beyond: Becoming an Indispensable Business Advisor

The 2018 ACC Mid-Year Meeting (April 22-24, Denver CO) is designed to arm experienced in-house counsel with the knowledge and insights required to be better business strategists for their organizations. The program focuses on the most pressing challenges and concrete solutions surrounding both contracts and mergers & acquisitions. The entire curriculum is advanced and offers practical guidance to help in-house lawyers do their jobs more efficiently and effectively. Register today at www.acc.com/mym.

2018 ACC Annual Meeting: Early Bird Rates End March 28

The 2018 ACC Annual Meeting, the world's largest gathering of in-house counsel, is scheduled for October 21-24 in Austin, TX. In less than three days you can choose from over 100 substantive sessions to fulfill your annual CLE/CPD requirements, meet leading legal service providers and network with your in-house peers from around the world. Visit am.acc.com for more information.

Drive Success with Business Education for In-house Counsel

To become a trusted advisor for business executives, it's imperative for in-house counsel to understand the business operations of your company. Attend business education courses offered by ACC and the Boston University Questrom School of Business to learn critical business disciplines and earn valuable CLE credits:

- Mini MBA for In-house Counsel, February 26-28, April 9-11, May 8-10 (Los Angeles), June 4-6, September 12-14, and November 7-9
- Finance and Accounting for In-house Counsel, September 5-7
- Project Management for in-house Law Department, November 14-15

Learn more and register at www.acc.com/businessedu.

Are You Conducting Diligence on EVERY VENDOR and Third-party that has Access to Your Systems or Data?

Your vendors are now prime targets for data breaches and small vendors can provide easy access for hackers. Even cleaning crews, HVAC vendors, and food distributors, to name a few, can all lead to data breaches, but are often overlooked in the vendor diligence process. ACC's Exclusive third-party due diligence service should be in your arsenal. Visit www.acc.com/VRS for more information.

Celebrate Pro Bono and Diversity

Have you or someone you know of made great strides in promoting diversity in the legal profession or providing pro bono legal services? Submit your nominations today for the [ACC 2018 Matthew J. Whitehead, II Diversity Award](#) and the [ACC 2018 Corporate Pro Bono Award](#) to have their achievements recognized! You can nominate an individual or organization for either award – self-nominations are welcome – and submit the completed nomination form along with supporting materials to The ACC Foundation, at foundation@acc.com. Deadline for submitting your nomination is May 11.

New to In-house? Are you prepared?

The ACC Corporate Counsel University® (June 20-22, Philadelphia, PA), combines practical fundamentals with career building opportunities, which will help you excel in your in-house role. Come to this unrivaled event to gain valuable insights from experienced in-house counsel, earn CLE/CPD credits (including ethics credits) and build relationships and expand your network of peers. Register at ccu.acc.com.

Just Released: ACC Chief Legal Officers 2018 Survey

The ACC Chief Legal Officers Survey offers an opportunity to get data that supports the imperative for the CLO to report directly to the CEO. Other notable findings include what keeps CLOs up at night, reporting structures, how CLOs view the future of departmental budgets and staffing, litigation and contract workload, and where data breaches and regulatory issues have the greatest impact. Download it today at www.acc.com/closurvey.

Have you considered that you and your professional legal services may be subject to malpractice scrutiny? Legal malpractice lawsuits can happen unexpectedly—even to in-house counsel. If you rely solely on the protection of corporate management liability coverage, your personal assets and reputation could be at risk. It may surprise you to learn that some of your peers have discovered firsthand that risky coverage gaps often exist. Since 1996, the ACC has turned to Chubb to address malpractice issues unique to in-house counsel. Learn more about Chubb at www.chubb/acc.

Whether managing compliance and ethics, obtaining permissions, or organizing your company's licensing agreements, Copyright Clearance Center's (CCC) Education Certificate Program will guide you through the complex world of copyright. ACC members receive a **25% discount** through 12.31.18 with **promo code: ACC2018**. Visit <http://go.copyright.com/acc2018/education> for a complete schedule and advance your copyright knowledge today.

Don't Miss!

This year our monthly CLE luncheons will continue to take place at the Plaza Club for the the next several months.

The cost to attend the luncheons is \$15.00 for members and \$25.00 for non-member guests. (In-house counsel and sponsoring firm only, please.) Check out our Chapter web page at <http://www.acc.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.

ACColades



Bryce Seki has been promoted to vice President, general counsel, secretary and compliance officer of Pioneer Energy Services. Congratulations, Bryce!

Former ACC member and past chapter president, **Kelli Cubeta**, has formed her own law firm. We welcome Kelli's new firm, Cubeta Clarke (www.cubetaclarke.com), as a 2018 platinum level chapter sponsor!



John McLeod is retiring after 37 years with Southwest Research Institute and **Monica Trollinger** will be taking over the role of General Counsel. Congratulations and best wishes to both John and Monica!



ACC South/Central Texas large law department member, **USAA**, recently made Forbes's list of The Best Employers for Diversity. Way to go, USAA!



Ashley Street, USAA, was the winner of our ACC Chapter Survey participant prize drawing. Thanks to Ashley and all of you who participated in the survey!

Have you received a promotion lately? Changed jobs? Do you know of someone who is new to in-house or who deserves a little recognition for a job well done? Please email us at southcentraltx@accglobal.com with your "ACColades" tips.

ACC Running Club- "Team Accelerate" News

The ACC Running Club is in the process of planning some great runs for this year. If you would like to be included on the running club's email list and receive notices of events, please contact our new Team ACCelerate club chair, Javier Aranda at jaranda@wbhq.com.



Ethics Follies

By Lee Cusenbary, General Counsel of Mission Pharmacal



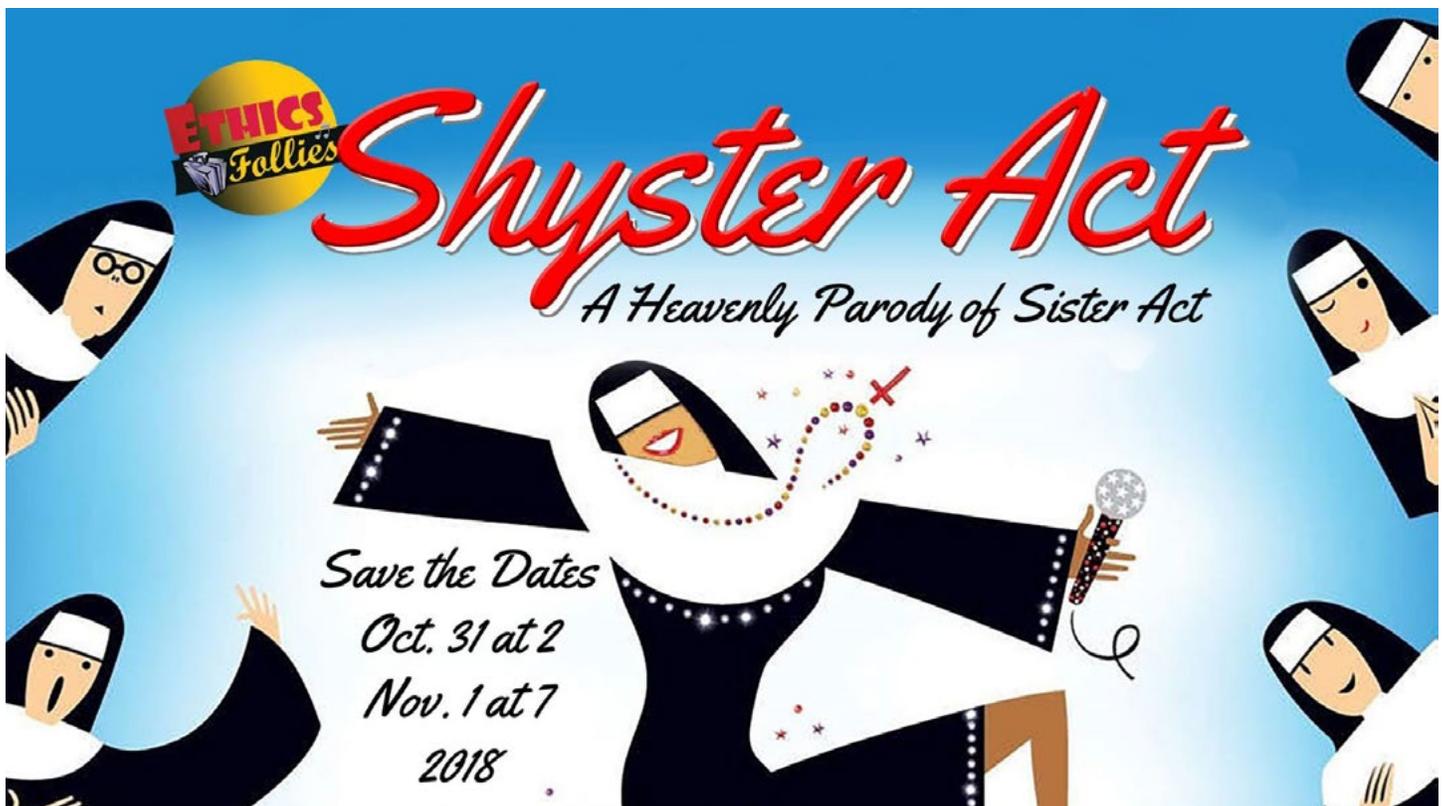
The Ethics Follies® production, *Being Walter Decent*, is now streaming online for your entertainment and education. Receive two hours Texas Ethics MCLE for \$100 (same as some Texas State Bar CLE, but more entertaining). [For current ACC members, the MCLE is yours for only \$60!]

The next Ethics Follies show is *Shyster Act*, an ethical parody of the hilarious Whoopie Goldberg film and Broadway show, *Sister Act*. Please let me or Amber know if you'd like to be in the show. It begins rehearsals four days a week in September of 2018. ACC members are cast first to ensure everyone who wants to be involved can be. We can also use help backstage and in the house the days of the shows at the Empire Theater.

Here's our list of current show dates:

- » National ACC Conference at Austin Convention Center on Oct. 22 or 23
- » National Bankruptcy Judges Conference in San Antonio on Oct. 30, 2018 at 9 a.m. (one hour preview in Convention Center)
- » Empire Theater Oct. 31, 2018 from 2-4:30
- » Empire Theater, Nov. 1, 2018 at 7
- » New Jersey ACC on Thursday, Nov. 15, 2018

Please save the dates for the shows at The Empire Theater. Your support makes the show a success each year. Thank you!



Upcoming Events

February 22, 2018

The San Antonio Bar Association along with the ACC South Central Texas Chapter, the San Antonio CPA Society and the Rivard Report invites the San Antonio community to attend our first Quarterly Luncheon featuring Mayor Ron Nirenberg in conversation with Robert Rivard at the Sonterra Country Club.

We look forward to presenting a unique conversation with Mayor Ron Nirenberg, discussing new projects and initiatives in San Antonio's tricentennial year. This is an opportunity for networking, firm team building and building rapport with clients.

Cost:

\$50 - Guests

\$35 - SABA & ACC Members

email southcentraltx@accglobal.com for registration information.

March 7, 2018

Express CLE Luncheon

11:45am-1pm at the Plaza Club: Advanced Contract Drafting, sponsored and presented by Dykema Cox Smith

March 8, 2018

4-5:30 p.m.

ACC's Community Outreach Group's In-House Counsel presentation to St. Mary's University Students.

If you are interested in participating in this "speed dating" style presentation to students on what life is like as an in-house counsel, please let our community outreach chair, Rode Moore, know moorera@zachrygroup.com.

March 22, 2018

4:30pm -6:30pm

Thirsty Thursday/ ACC Global Membership Month Event at Tiago's- 1711 IH 10 West , #101

April 13, 2018

ACC's 6th Annual Golf Tournament & Social

at The Quarry Golf Club, 11:30am lunch and registration/ 1pm tee time/ 5pm Happy Hour. Email Amber Clark at southcentraltx@accglobal.com to reserve a foursome or hole sponsorship!

For more information, or to register for any of these events, contact Amber Clark at southcentraltx@accglobal.com.

Welcome New Members!

Michael Cubeta
SVP, Legal Services,
Security Service
Federal Credit Union

Dathan Voelter
Managing Counsel,
Andeavor

Adam Aldrete
Sr. Manager Legal
Counsel, CPS Energy

Natalie Karge
Contract Attorney,
Valero Energy
Corporation

Sally Russell
Corporate Counsel,
Andeavor

Claudius Sokenu
Deputy General
Counsel Andeavor

Jason Cone
President, CeloNova
Biosciences, Inc.

Andrea Cox
Supplier Governance
Advisor, USAA

Lars Jensen
Lead Program
Manager, USAA

Trey Sadiq
Attorney, USAA

Sarah Scheidt
Attorney, USAA

Sakina Sharp
VP Attorney, USAA

Elena Sullivan
Attorney, USAA

Brian Pullin
Staff Attorney
Security Service
Federal Credit Union

Debra Keener
SVP, Deputy
General Counsel
Harland Clarke
Holdings Corp.

Michael Stanush
Corporate
Counsel, Scantron
Corporation

**Pamelyn
Woodfolk**
Corporate Counsel,
Harland Clarke
Holdings Corp.

Morgan Stephens
Corporate
Counsel, Real
Estate, Andeavor

Laurie Stallman
Manager, Legal
Operations,
Pearson plc

Samantha Dyal
Counsel, Valero
Energy Corporation

Board Priorities for 2018

By Jamie Smith, Dykema Cox Smith

Each year, accounting firms, consulting firms, law firms and the National Association of Corporate Directors survey clients and members to identify priorities for Boards of Directors during the upcoming year. These surveys are instructive for public companies, private companies, family businesses and nonprofit corporations, as all face similar challenges in adjusting to the evolving changes in business and society. What follows is a compilation of suggestions from these sources, presented for consideration by Board members, corporate management, and professional advisors.

A recurring theme in the survey responses is the continuing challenge for Boards and management teams presented with the ongoing business disruptions caused by technology. The most well-publicized and pernicious of these are cyber threats and the associated risks to a company's business resulting from theft of critical information. Much has been written regarding the extent of these risks, and yet many management teams and Boards are ill-suited to address data security in an informed manner. Regulatory requirements proliferate but often do not address the key business issues. Boards must ask and answer key questions: Where is the company most at risk, and how can we minimize the company's exposure? What are the possible impacts of identified but potentially unavoidable risks? Do we have the right team, internal and/or external, to guide us in managing these risks and to keep up with the evolution of the risk profile? Should we employ insurance to minimize the impact? Boards should require frequent reports and updates to ensure their oversight responsibility is adequately discharged and, if the Board is uncomfortable with the cyber-risk team, changes to the team should be considered.

A longer-term business risk is disruption associated with the evolution of technology affecting the company's business processes. Digital, mobile, cloud

computing and IOT are prevalent and somewhat generally understood. But what effects will artificial intelligence, big data analytics, robotic process automation and block chain technology have on the company's core business? What about the next "new" technological innovation? How will application of these innovations affect key vendors and customers? How do they affect the workplace and the fundamental culture of the company? What should the Board be planning for today in order for the company to succeed five years from now? And, where does one find the business "futurists" who can help Boards understand what's on the horizon?

Changing global economic conditions and the uncertain political environment in the United States were also identified as material uncertainties. Newton's Third Law applies here – "for every action there is an equal and opposite reaction." Uncertainty in American policy regarding trade, the economy, defense and other issues leads to greater uncertainty regarding how other countries react, and those reactions can in many instances have significant economic effects on American businesses. Economic uncertainty, compounded by the uncertainty in Washington, weighs on the ability of Boards to assume stability and predictability as they evaluate alternative strategies and courses of action. The changing face of government regulation and necessary compliance programs enhance the complexity of this deliberation.

While many Boards may consider ESG (Environmental, Social and Governance) matters to be secondary, activist investors and declining trust in business among the broader public have emerged to force those issues back on corporate agendas. Whether the issue is climate change, pay equality or an issue unique to a particular industry or company, advocates for narrow causes are often loud and distracting and can affect a company's business. Businesses are, after all, part of the society in which we live and upon which those businesses depend

for success. Company management and Boards do not have the relative luxury of deleting or diminishing societal issues from Board agendas. Instead, the recommended course of action would be to actively engage in an effort to understand the priorities of key investors, stakeholders and other important constituencies. Where appropriate, adjust practices to address their priorities in ways that foster long-term business growth and position the company as responsive to societal issues. Even where requested action is not taken, Boards will get credit for participating in the dialogue.

Attention to social and cultural issues is also important to other constituencies – for example, a company's employees or prospective employees and its customers. Social awareness and corporate culture have become important to today's younger workforce, a factor highlighted in what is essentially a "full employment" economy. Executives and Board members must keep a clear eye on the culture of the company and direct its development and evolution toward a goal synchronous with the priorities of the workforce and customers. While ESG initiatives may play a part, some more practical concerns may dominate. Does the company adopt procedures that facilitate a tech-friendly, mobile workforce? What portfolio of workforce assets (traditional, virtual, part-time, contract, etc.) is appropriate for the business model? Are diversity and gender equality acknowledged and enforced as key values? Is work-life balance acknowledged as a priority, with appropriate vacation and parental leave policies? What nontraditional benefits are afforded to employees? How can policies and procedures be identified which shape the culture of the company to best fit the desired workforce? What are the key performance metrics that define success in the company? These issues, properly addressed, can differentiate a company in today's economy by assuring qualified and committed employees. Companies

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should strive to be “purpose-driven.” And nothing is more important in society’s assessment of these factors than the tone set by senior management, including zero tolerance for conduct inconsistent with the company’s values and standards.

Corporate strategy used to be the function of senior management, with communication to and oversight by the Board. However, many of the directors surveyed are of the opinion that today’s Boards must be involved in the development of strategy, not just oversight. Boards want to understand risks and opportunities that can affect performance of the business and that drive strategic assumptions and choices. This “deeper dive” imposes a higher burden on management and directors but provides an opportunity to stay in closer touch with the accelerating evolution of trends affecting the business. What must directors see and fully understand in order to learn how change is affecting the business? Management teams should be proactive in educating the Board so as to derive the greatest value from truly informed directors.

Given the elevation of risks and the impact of unforeseen events, Boards must also consider development of crisis management plans addressing key risks. “Gaming” of crises has gained prevalence

for purposes of creating playbooks tailored to significant risks. These plans necessarily include operational and legal input, but they should acknowledge that reputational risk in a time of 24-hour news cycles is greater and potentially more damaging than ever. No crisis will ever evolve exactly as gamed; but, without an accepted, understood and rehearsed plan, a crisis is likely to be less managed and more serious in its effects on the company.

Boards should also continually address Board composition and operation. Does the Board have the right collection of resources? What talents/experiences should be added or replaced? How can the Board enhance its performance? Does the Board use self-evaluation tools and address identified shortcomings? Is the Board appropriately diverse? In short, Boards must continually work to improve their ability to perform well for the benefit of management, investors and other constituencies.

Against the background of these and many other complex and rapidly changing business issues, maintaining a focus on long-term creation of value for investors and stakeholders can be a challenge. Yet, ultimately, that is the fundamental goal of any Board of Directors. Trends and incidents present shorter term risks that must be managed, but focusing on the company’s risk profile cannot lead to

paralysis at the Board or management level. The challenges of the short-term must be addressed, but they must be addressed in a manner that furthers the goal of maximizing value creation over the long term. Significant human and financial resources may be required to successfully address shorter term issues affecting the business. However, as a director, be sure those commitments are balanced against steady progress toward growing the long-term value of the company for the benefit of all the company’s constituencies.

It’s a tough job. Good luck!



Jamie Smith is a member at Dykema Cox Smith where he practices in business transactional matters, including mergers and

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Jackson Walker’s Interactive Analysis of the Tax Reform Law Now Available Online

On December 22, 2017, President Trump signed the “Tax Cuts and Jobs Act” into law, launching the most significant tax reform in over 30 years. The new law significantly impacts citizens and companies alike in both their domestic and foreign income and assets.

Willie H. Hornberger, with the help of a team of Jackson Walker attorneys, has reduced everything you need to know about the 2018 Tax Reform into a single page. A single interactive page that is. Those who are interested in what the new tax system means to them can scan one

page for tax implications that may affect them, click the subject of interest, and be taken directly to that area of the 233-page PowerPoint presentation. We believe this is the first Interactive Analysis of the Tax Reform Law available online.

Willie and Jason B Freeman of Freeman Law used the PowerPoint for their webcast presentation entitled “2018 Tax Reform: What You Need to Know Now” given for the State Bar of Texas and Texas Law Center on January 23, 2018. The webcast provided an overview of the reform provisions with particular

attention to the issues that will affect attorneys and their clients including, specifically, the impact of the corporate and pass-through tax changes and overhaul of the international tax system. The webcast will be archived and available for purchase at TexasBarCle.com.

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