



402:CHAIR'S CHOICE To Write: Right or Wrong?

Lucy Lee Helm

Vice President, Assistant General Counsel, Litigation and Employment
Starbucks Coffee Company

Alice Lawrence

Principle
Jordan Lawrence Group

Larry L. Sharrar

General Counsel
Lockheed Martin Space Operations

Faculty Biographies

Lucy Lee Helm

Lucy Lee Helm is vice president and assistant general counsel, litigation & employment for Starbucks Coffee Company in Seattle. Ms. Helm manages a team of 11 litigation and labor and employment attorneys and paralegals. For several years, Ms. Helm has also managed Starbucks' corporate records management program.

Prior to joining the Starbucks law and corporate affairs department, Ms. Helm was principal at Riddell Williams P.S., in Seattle, where she specialized in commercial, insurance coverage, and environmental litigation, and as a commercial litigator with Barnett & Alagia in Louisville, Kentucky. Ms. Helm was also an assistant director and advocacy director at the Center for Accessible Living in Louisville, Kentucky.

Ms. Helm currently serves as a board member of the YMCA Youth & Government Program and the YWCA Leadership Program for Young Women and Girls. She is a cooperating attorney for the ACLU of Washington and the King County Bar Association's Housing Justice Project, and chairs the pro bono committee of the Starbucks legal department.

Ms. Helm received her BA, with highest honors, from the University of Louisville and is a cum laude graduate of the University of Louisville School of Law.

Alice Lawrence

Alice Lawrence is the director of operations at Jordan Lawrence Group and an industry-noted expert in top breakthroughs that enable companies to establish and enforce legally defensible corporate records programs. She joined the firm as a project manager, and has worked with hundreds of major corporations on complex corporate records issues and advised top executives at companies as diverse as Cingular Wireless, JPMorgan Chase, NiSource, Oracle, and Weight Watchers. She pioneered the development effort of the company's web-based enforcement tools, and currently advises the operations group. Ms. Lawrence also manages customer relationships, strategic alliances, and frequently speaks to executives at seminars and conferences.

Larry L. Sharrar

Larry L. Sharrar is general counsel for Lockheed Martin Space Operations (LMSO), a business unit of Lockheed Martin Services, Incorporated (LMSI) of Cherry Hill, New Jersey. His responsibilities include providing legal advice and counsel to the president of LMSO and his staff on all areas of company operation, managing litigation, hiring and managing outside counsel, facilitating business operations, and development of new business with governmental and commercial users of outer space.

Before joining Lockheed Martin, Mr. Sharrar was vice president and general counsel of Barba-Arkhon International, Inc., in Mt. Laurel, New Jersey. While at Barba-Arkhon, he provided advice and counsel on a variety of substantive areas, including government contracts, employment law, licensing, and critical path method analysis. Prior to joining Barba-Arkhon, Mr. Sharrar served as a judge advocate general in the United States Air Force. In his final assignment, he served as a senior trial attorney for the United States Air Force ASBCA trial team.

Mr. Sharrar received his BS from the United States Air Force Academy, and his JD from the University of Washington. He subsequently received a MS in aviation technology from the University of Tennessee.



Session 402
“To Write: Right or Wrong?”

Lucy Lee Helm - Starbucks
Alice Lawrence – Jordan Lawrence Group
Larry L. Sharrar – Lockheed Martin

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There are specific legal implications (good and bad) resulting from how companies control documents.

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The Dilemma

- Early in our business careers we are taught to “put it in writing.”
- In business, “putting it in writing” provides a sense of permanence, history and protection.
 - In today’s business world most “writing” is done via the computer in form or e-mail.
 - For a variety of cultural reasons e-mail is not considered the same as other forms of written communication.
- In litigation, the parties are allowed access to and review all non-privileged documents including electronic media.
- These documents become evidence both for and against a company.

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E-Mail Horror Stories

- An Energy Company
- An Aerospace Company
- Another Energy Company
- Problem is not limited to employees, but includes Management at the highest levels.

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The Solution ?

- Don't write anything down.
 - No documents – No discovery.
 - No documents – No records of decisions, thoughts, or observations.
 - A world without e-mails?
- Educate employees on the proper use of e-mails in business.
 - Popular culture.
 - The e-mail phenomena.

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The Solution!

- Key: Write down and save only what is necessary to perform job.
- Seek legal advice early.
- Include your legal advisor as an addressee on written communications regarding problems.
- Request legal advisor to initiate investigations whenever litigation possible.
- Analyze your situation and put a system to control it in place.

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Let's Talk

- The Starbucks Experience.
 - What they did.
 - What they have yet to do.
- The Professional's Point of View.
 - Corporate Requirements.
 - Types of control.
 - Protecting the corporation.
 - Sarbanes-Oxley

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What Happens to All Those Records?

Starbucks Coffee Company's Records Review Project

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Project Purpose and Scope

- Project Genesis - Convergence of Events:
 - Growth in number of e-mails and electronic records across the company
 - IT Department's review of content management systems to manage company's electronic records
 - Sarbanes Oxley Act, Enron situation and other incidents highlighted risks of non-compliance with records management policies
 - Lack of resources/mechanisms to enforce compliance with existing corporate records policies
 - Business Continuity – need to preserve company's historical and vital records in event of disaster

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Project Purpose and Scope

- Project Team – members from:
 - Law & Corporate Affairs
 - Records Management
 - Human Resources
 - IT
 - Information Security
 - Administration

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Project Purpose and Scope

- Project Objectives
 - Assess Starbucks policies and practices pertaining to:
 - Records retention
 - Records destruction
 - File management
 - On-site/off-site records storage
 - Paper versus electronic records
 - Compare Starbucks policies and programs with current and best practices of other records management programs
 - Recommend action and gain executive support

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Starbucks Records Management Program

- First began in 1995 – Focus on off-site storage
- Moved to Law & Corporate Affairs
 - 2 member team
 - Developed and implemented records retention schedule
 - Managed off-site records storage and preservation of vital records
 - Provided guidance to business units on records retention and destruction
 - Maintained “records holds” for litigation and investigations
- Other departments have own dedicated records employees, but system is not centralized
- No company-wide “content management” system

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Actions of Project Team

- Revised existing records retention schedule
 - Simplified instructions for employees
 - Focused on broad categories of documents
- Held first annual “Records Clean Up” event at corporate headquarters
- Hired consultant to study internal policies and procedures, benchmark other companies’ practices, and make recommendations about organization and need for resources
 - Consultant – @doc (specializing in records management strategies and technologies)
 - 12 week study

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Consultant’s Findings

- Internal Practices and Procedures
 - Priority is on getting work done, not on how to draft, preserve or destroy documents
 - Greatest challenge is electronic records, not paper records
 - E-mail is used to manage electronic files (including vital records) because of lack of direction on use of network drives
 - Employees welcome and would follow direction and rules on content and storage of electronic records
- Benchmarking – Other Companies’ Practices
 - Same issues exist across industries
 - Great variability in staffing levels, budgets, resources, organization of corporate records programs
 - No answer to issue of handling tremendous growth in electronic records

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Consultant's Recommendations

- Expand concept of records management to include the control of all records, regardless of format or media, from creation or receipt through distribution, maintenance, retrieval to disposition
- Develop policies and practices around content management
- Change Records Management Program to be an enterprise-wide operations function rather than a legal function
 - Expand size of staff, including adding IT expert
 - Report to Administration
 - Legal and IT should play critical oversight and support roles
- Appoint records coordinators in each department and business unit
- Utilize new records management technology and automated processes (automatic destruction/retention; imaging and scanning)
- Expand scope of records management to international business

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Corporate Requirements

To protect your corporate interests and executive Liability, and reduce legal risks, you must be able to meet these 4 requirements:

- Keep records long enough to meet legal and operational requirements.
- Locate records quickly and effectively when needed.
- Protect records when needed.
- Destroy records systematically when obsolete.

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Critical Information

The only possible way to meet these requirements is to know 4 pieces of information about your company's records:

- What types of records you retain.
- Who controls them.
- Where they are located.
- When they become obsolete.



Types of Control

Centralized

- Company focus
- Automated
- Nearly perfect



Types of Control

Individual

- Company has limited control
- Employee focus
- Shift accountability and reliability

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Weighing Enforcement Benefits Against Costs

- 80/20 Rule
- Practicality
- Business Needs

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Shielding the Corporation

- Educate employees
- Validate and track compliance
- Enforce consequences for non-compliance
- Develop an audit trail

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Summary

- Manage Documentation.
 - Create a system & follow it.
 - Remember that e-mails are written documents.
- Route issues through legal office.
 - Upjohn Letter.
 - Consider Sarbanes –Oxley requirements.
- Educate your employees and management.
- Group Discussion

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Tips

- Remember: e-mails are written communication.
- Recognize that every thought you have, does not have to be recorded for posterity.
- Write e-mails as though your 6th grade teacher might read them.
- Just because it sounds funny or smart today, doesn't mean it will sound that way when read in court.

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Tips

- Nothing was meant to last forever, purge your e-mails on a regular basis.
- Remember that specific steps must be taken to preserve privilege during an investigation.
- Timing is everything, don't start cleaning up your documents after you become aware of a potential lawsuit.
- Sometimes it just might be better to pick up the phone and call.

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Suggested Reading

- “Avoiding Litigation Pitfalls: Practical Tips for Internal E-Mail”, by Bart Sloan, Risk Management Magazine, July 2004, pp. 38-42. (www.rmm.com)
- “Leading Practices in Information Management and Record Retention Programs: What Companies are Doing”, Part of an Ongoing Series of ACCA’s “Leading Practices Profiles”, August 2003 (www.acca.com/v1/practiceprofiles.php)