

702 Moving Beyond Litigation Management: Putting Your Stamp on Company Activities

Albert C. Peters II Assistant Counsel Pennsylvania Turnpike Commission

Meredith B. Stone Vice President, General Counsel, Americas NACCO Materials Handling Group, Inc.

Richard S. Veys Senior Counsel A.T. Kearney, Inc.

Faculty Biographies

Albert C. Peters, II

Albert C. Peters II is assistant counsel with the Pennsylvania Turnpike Commission. His primary practice areas include contracts, labor and employment, and litigation management. He also conducts training programs in contract management, labor relations, supervisory development, and construction law.

Mr. Peters is president of ACCA's Central Pennsylvania chapter and vice chair of ACCA's Small Law Department Committee.

Mr. Peters is an evening instructor for Penn State Harrisburg where he teaches a four-credit course on business environments (law, ethics, and social responsibility). Mr. Peters is active in coaching and scouting volunteer activities.

Mr. Peters received a BA from the University of Virginia and a JD from the University of Pittsburgh School of Law.

Meredith B. Stone

Meredith B. Stone is vice president, general counsel, Americas for NACCO Materials Handling Group, Inc. She is responsible for all legal matters affecting the Americas Division of NMHG, located in Greenville, NC, with operations throughout North and South America. This includes responsibility for litigation matters, providing advice on and representing the division in corporate transactions, negotiating, drafting and approving contractual commitments, advising and counseling the division on employment law issues, providing preventative legal training to employees, and overseeing the legal compliance of the division in North, South and Central America, including international transactions.

Prior to joining NACCO Materials Handling Group, Inc., Ms. Stone was the vice president, general counsel and secretary for Konica Business Technologies, Inc., a general attorney for the Long Island Railroad Company; an associate attorney with Levine & Robinson, P.C.; and an assistant corporation counsel for the law department of the City of New York.

Ms. Stone is the past president of ACCA's Connecticut Chapter and is also a member of the ABA (Employment Law and Antitrust Sections) and the New York State Bar Association.

Ms. Stone earned a BA from the University of Vermont and JD cum laude from St. John's University School of Law.

Richard S. Veys

Richard S. Veys is senior counsel for A.T. Kearney, Inc., a global management consulting firm, based in Chicago.

Mr. Veys has been an inside attorney for over 15 years. Before joining A.T. Kearney, he was general counsel for XL/Datacomp, Inc. (a Chicago-based subsidiary of Storage Technology Corporation). Prior to that, he was senior attorney for NCR Corporation of Dayton, OH.

Mr. Veys has been an active member of ACCA, serving as a director of the Chicago Chapter for five years, as well as treasurer and president. As immediate past president, he is currently chair of the Chapter's Board of Directors.

Mr. Veys received his undergraduate degree (BA) from the University of Nebraska, and his JD, cum laude, from the University of Illinois College of Law.

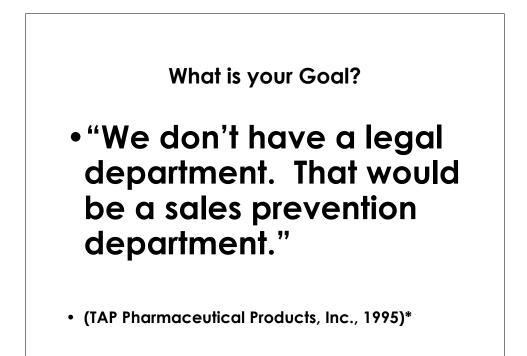
BEYOND LITIGATION MANAGEMENT

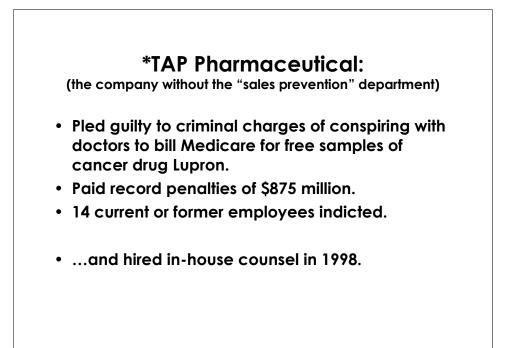
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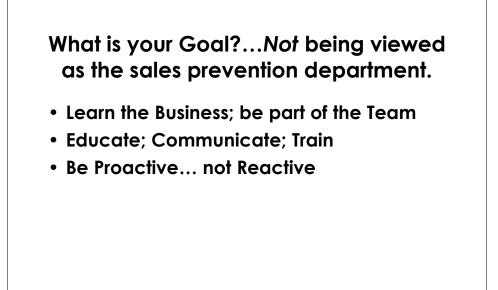
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ACCA National Meeting -October 22, 2002







Learn the Business

- Industry
- Company Organization & Culture
- People; Products; Operations



Learn the Business - Industry

- Strategic Plan
 - Market overview
 - SWOT analysis
- Trade magazines/ journals
- Industry trade associations
 - Is there a lawyers' committee?
- Negotiations w/ clients-customers
- Employees

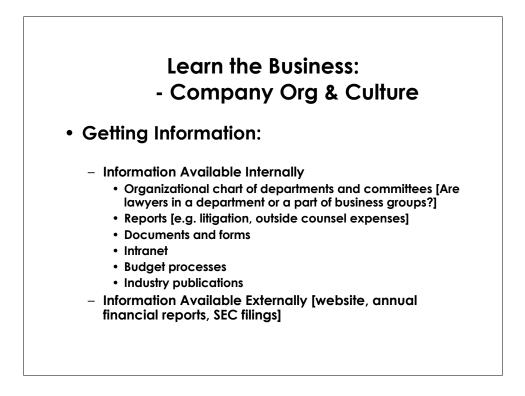
Learn the Business: - Company Org & Culture

- Important Questions:
 - Were you specifically hired to do something? What?
 - What are the company attitudes toward Legal?
 - Who are the "showhorses" and "workhorses"?
 - How are decisions made?
 - Who needs to be informed?
 - Are there any unwritten rules?

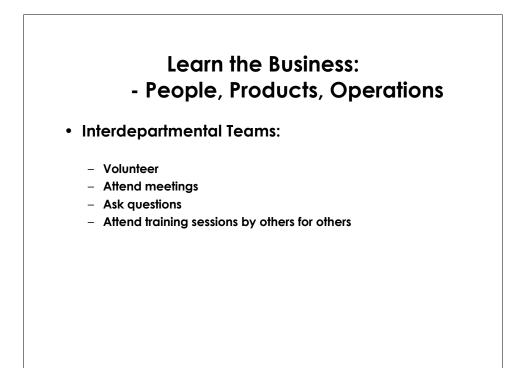
Learn the Business: - Company Org & Culture

• Getting Information:

- Listening and watching
- Meeting people and asking questions [don't forget secretaries]
 - Hallway meetings
 - Asking people what they are working on
 - Organized meetings [board, staff, etc.]
 - Getting involved in projects and committees
 - Chemistry between you and department heads





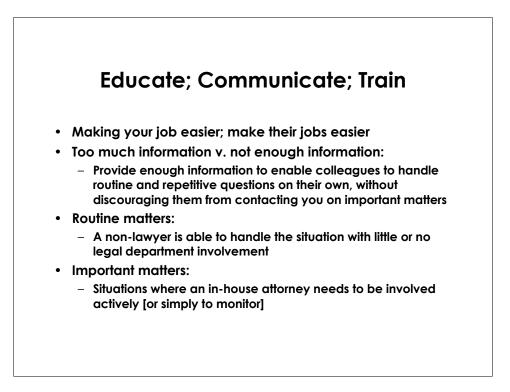


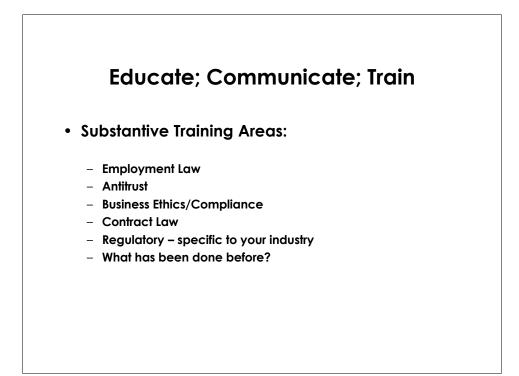
Learn the Business: - People, Products, Operations

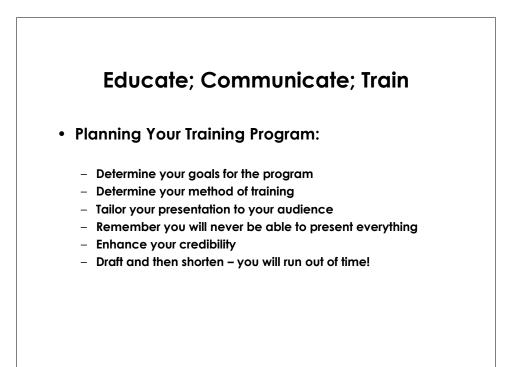
• Claim/Litigation Review:

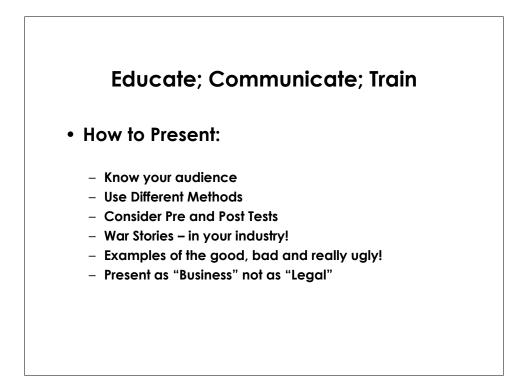
- How much autonomy to outside counsel
- Review current litigation
- Review recently concluded litigation
- Find out about "major" litigation in your industry

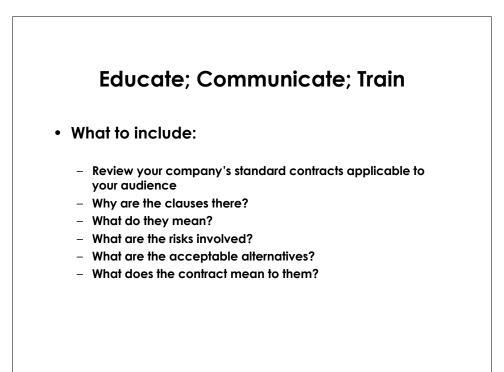
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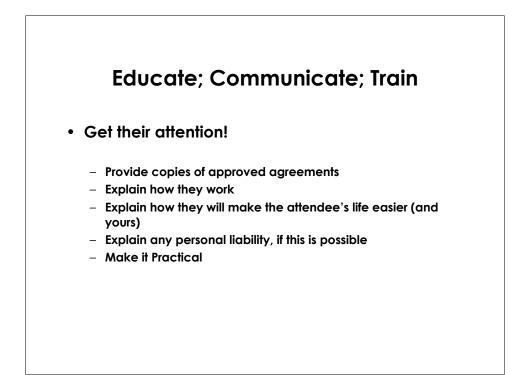


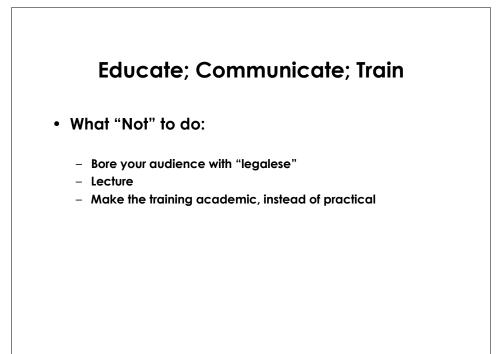


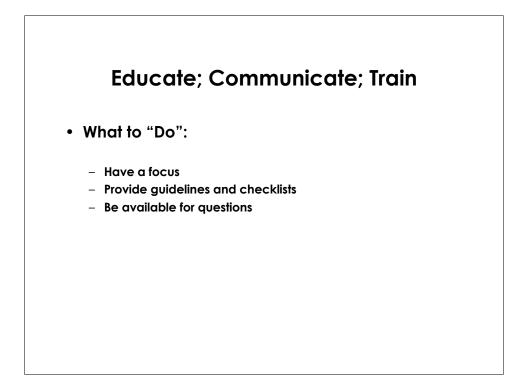


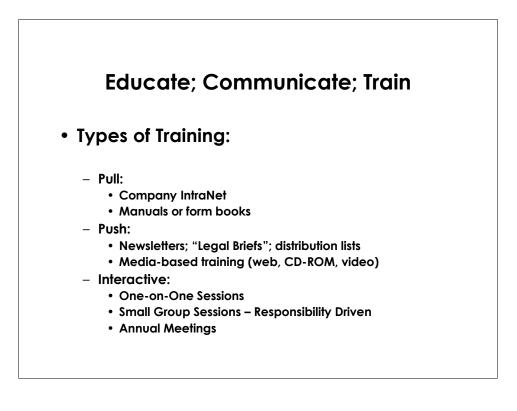


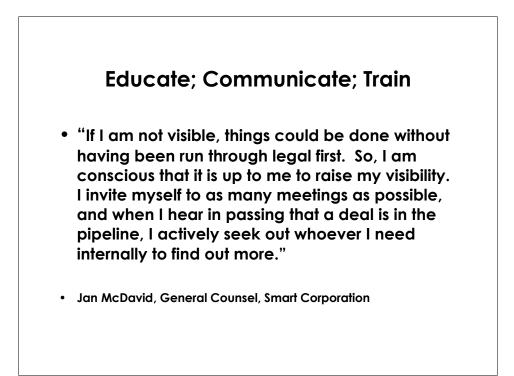


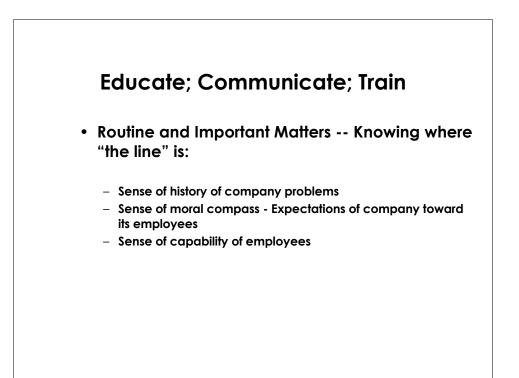


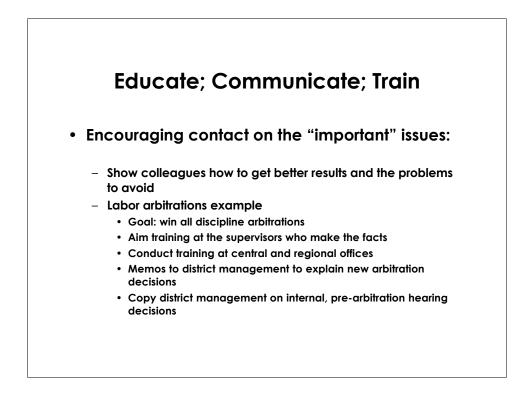






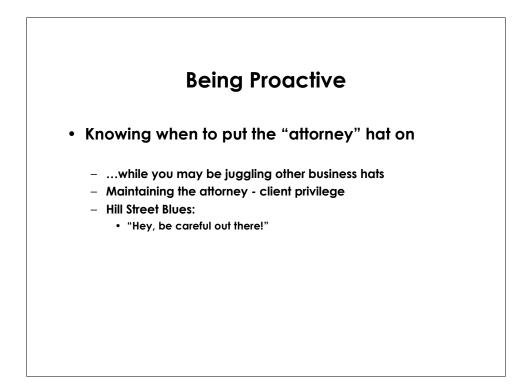


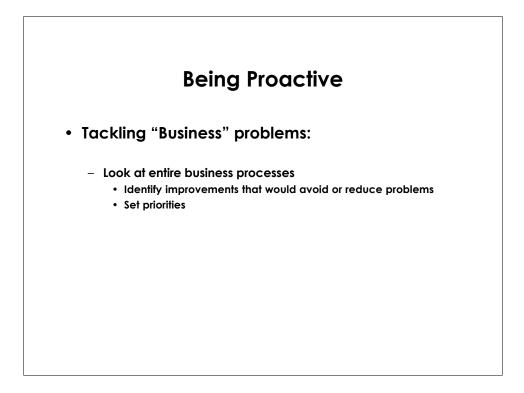


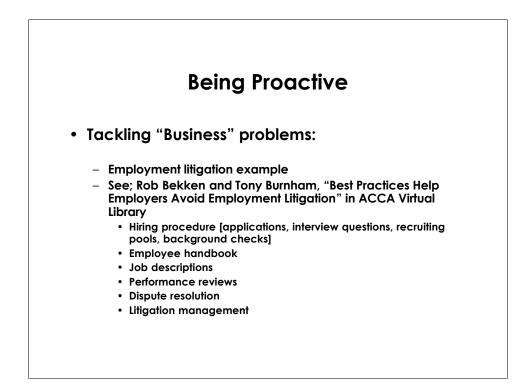


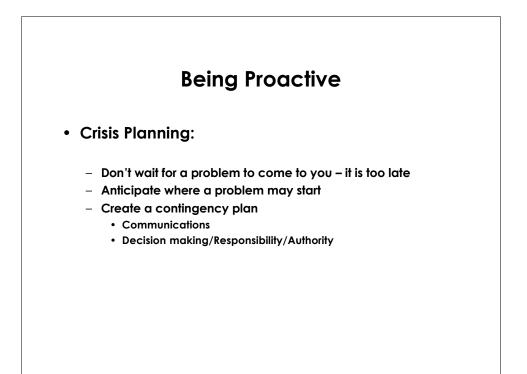
Being Proactive

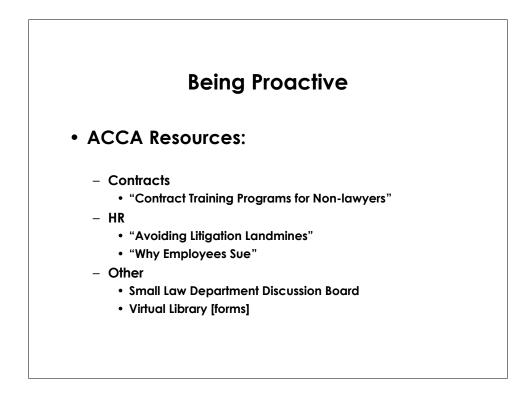
- Knowing when to put the "attorney" hat on
- Tackling "Business" problems
- Leveraging resources
- Being part of the Team



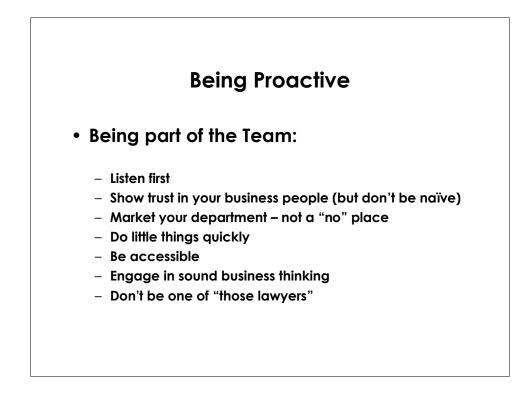






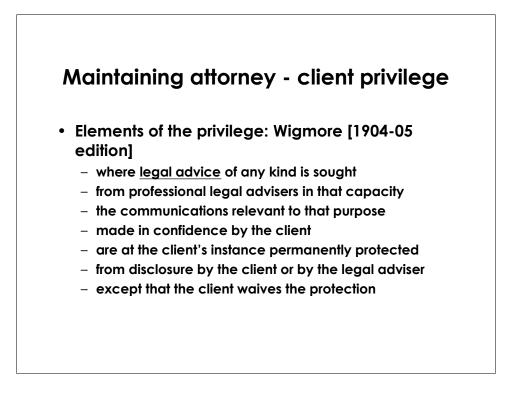






APPENDIX

Maintaining the Attorney-Client Privilege





- Remember that courts in general are leery of privileges because they exclude evidence, and this frustrates the truth-finding function of trials
- "Evidentiary privileges in litigation are not favored, and even those rooted in the Constitution must give way in proper circumstances. The President, for example, does not have an absolute privilege against disclosure of materials subpoenaed for a judicial proceeding." Justice White in <u>Herbert v. Lando</u>, 441 U.S. 174, 175, 99 S.Ct. 1635, 1648 (1979).



Maintaining attorney - client privilege: Investigations

- Upjohn v. U.S., 101 S.Ct. 677 (1981)
- General counsel and outside counsel prepared a letter and questionnaire sent over the signature of the chairman of the board. Recipients were directed to return the questionnaire to the general counsel.
- Court: "... the privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice."

Maintaining attorney - client privilege: Business planning/ reorganization

- U.S. v. Adlman, 68 F.3d 1495 (2nd Cir. 1995)
- Attorney employed as VP of Taxes consulted with accounting firm partner regarding a planned combination of two subsidiary corporations. Partner then prepared a detailed and technical tax analysis of the reorganization.
- Parent corporation argued that the analysis fit within the privilege because it was rendered to the VP of Taxes to assist the VP in giving legal advice to the parent corporation.

Maintaining attorney - client privilege: Business planning/ reorganization

- U.S. v. Adlman, 68 F.3d 1495 (2nd Cir. 1995) continued
- The court, in rejecting the claim of the privilege, considered that the accounting firm's handling of the matter was revealing:
 - The billing statements lumped the reorganization advice with other accounting and advisory services.
 - The accounting firm also sent a copy of its recommendations and conclusions directly to the corporation's management.

Maintaining attorney - client privilege: Internal memos

- <u>Rossi v. Blue Cross and Blue Shield</u>, 540 N.E.2d 703 (N.Y. 1989)
- Staff counsel prepared and sent a memo to the staff medical director. Staff counsel copied the superiors of both [VP/General Counsel and VP of Professional Affairs]
- Court's test:
 - Communications from client to attorney must be made for the purpose of obtaining legal advice and directed to an attorney for that purpose.
 - Communications from an attorney to the client must be made for the purpose of facilitating the rendition of legal advice or services in the course of a professional relationship.

Maintaining attorney - client privilege: Internal Memos

- <u>Rossi v. Blue Cross and Blue Shield</u>, 540 N.E.2d 703 (N.Y. 1989) continued
- Court: "So long as the communication is primarily or predominantly of a legal character, the privilege is not lost merely by reason of the fact that it also refers to certain nonlegal matters . . . Indeed, the nature of a lawyer's role is such that legal advice may often include reference to other relevant considerations."

Maintaining attorney - client privilege: Negotiating and terminating contracts

- <u>Georgia Pacific v. GAF</u>, 1996 U.S. Dist. LEXIS 671 (S.D.N.Y. 1996)
- In-house environmental counsel met with an executive and fellow in-house counsel regarding negotiations; advised that certain provisions might not cover certain claims; recommended how he would negotiate.
- The court rejected the claim of the privilege.
- Selected quotes from the court:
 - "acted as negotiator"
 - "business judgments of environmental risk"
 - "divorced from legal advice"

Maintaining attorney - client privilege: Negotiating and terminating contracts

- <u>Satcomm v. Orbcomm</u>, 1999 U.S. Dist. LEXIS 1553 (S.D.N.Y. 1999)
- Executive committee, including VP/General Counsel, met to discuss legal options regarding other contracting party's nonperformance of an agreement.
- VP/General Counsel's affidavit to court described purpose of the meeting, stated that she attended to render legal advice, and stated that conversations consisted of confidential communications to obtain her legal advice or that legal advice from her.

Maintaining attorney - client privilege: Negotiating and terminating contracts

- <u>Satcomm v. Orbcomm</u>, 1999 U.S. Dist. LEXIS 1553 (S.D.N.Y. 1999) continued
- Court's conclusion: Orbcomm provided sufficient information to invoke the attorney-client privilege
 - Meeting dealt exclusively with legal options in a contracts dispute, which involved the VP/General Counsel's main legal duties
 - VP/General Counsel attended the meeting to render legal advice on that issue
 - All conversations were directed to that end
 - No suggestion that meeting had a general business purpose that only touched tangentially on the legal issue