

# Administration Finance

## e-*communiqué*

Summer 2004

### From the Chair

By Fred Parker

There will not be a weather report from Raleigh in my last column. While not in some exotic place like Craig last summer, maybe I will be in a sailboat with a pleasant breeze prior to Hotlanta. Will there be any mention that 140 years ago it was burned by the federals? A repeat of the climate of last August in San Francisco would

be welcomed, but it is doubtful that will occur.

Serving as chair of your section this past year has been a gratifying experience. Thank you for your confidence last August. The gavel will pass to Helen Druce in Atlanta at the section breakfast on Thursday, August 5, at 8:00 a.m. in the Amsterdam Room, Convention

Level. Notwithstanding your attending the NABE casino party the night before, please attend the section breakfast where we will roll out the old and usher in the new. Let's welcome Helen with a good turnout.

If you have not registered for Atlanta it is not too late. Please make an effort to attend where you will have the opportunity to obtain professional development, network and see old friends.

The Planning Committee for the section

#### Section Leadership 2003-2004

Fred Parker, *Chair*  
Helen Druce, *Vice-Chair*  
Allen Kimbrough, *Secretary*  
Greg Derwart, *Treasurer*

#### Council Members

Dana Collier Smith (2004)  
Trudy Levindofske (2004)  
Judith Dugar (2005)  
Monica Mackie (2005)  
Colleen McManus (2005)

Craig Combs, *Immediate Past Chair*



Allan Ramsaur, seen here at a piano bar in San Antonio earlier this year, has been known to break into "Georgia on my Mind" upon request.

conference under the able direction of Treasurer Greg Derwart is hard at work. Expectations are high and there is excitement about this conference that will be held prior to the 2005 mid year meeting. The setting will be in the "Salt Palace" in Salt Lake City. The Committee's next meeting will be held during the forum and committee luncheon on Wednesday August 4. Members of the committee are: Julie Armstrong,

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## From the Chair

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Craig Combs, Helen Druce, Janis Jerman, Allen Kimbrough, Charlie Lorenzetti, Monica Mackie, Colleen McManus and yours truly.

Thanks are due to your officers and Council members who so ably served this past year: Helen Druce, Vice President; Allen Kimbrough, Secretary; Greg Derwart, Treasurer ; and Craig Combs, past chair.

Council members are: Dana Collier Smith; Trudy Levindofske; Judith Dugan; Monica Mackie and Colleen McManus.

At the time of this writing a goodly number of you have renewed your section membership. Thank you. We have also gotten some new members. Make renewal a priority if you have not done so. This section has much to offer you

as a bar executive in whatever capacity you serve your bar association.

Closing my final column would not be complete without thanking Greg Derwart who has produced and edited the informative e-communicu  (did someone say "Editor for Life") for the last several years. Also to those of you who submitted articles for publication or assisted Greg in obtaining previously published articles, thank you.

The NABE Board has been quite supportive of the section and we are most appreciative. Of course the DBA staff, especially Jill Werner and Maria Johnson has kept us on track and provided excellent support. Thank you.

See you in Atlanta,  
Fred

### NABE's New Digs

NABE and the Division for Bar Services survived the move of ABA offices from Fairbanks Court to 321 N. Clark St. in Chicago. In fact, moving was a tremendous motivator in enabling us to organize old files and purge duplicate materials. We are on the 20<sup>th</sup> Floor of this building, which is bounded on the south by the Chicago River. Our phone, fax and e-mail have remained the same. Our zip code changed from 60611 to 60610.



### DBS Corner



*Atlanta has a reputation for traditional Southern hospitality, and kindness to strangers.*

### Gov't Oversight of Nonprofit Spending

Regulations written to stem financial practices uncovered in recent corporate scandals are beginning to have an impact on nonprofit corporations, as well. Learn about "The High Cost of Being a Nonprofit Organization" in a free audio program sponsored by NABE, the Division for Bar Services and the ABA Center for CLE. The hour-long program will address the applicability of Sarbanes-Oxley, reporting potential conflicts within the board of directors, and proposed FEC regulations on advocacy issues. The program will be available June 21 through July 25. NABE members can access it from a link on the NABE website, [www.nabenet.org](http://www.nabenet.org).

## National Labor Relations Board Reverses Itself...Again

By Christine V. Walters, MAS, JD, SPHR

You are conducting a workplace investigation and need to interview one of your non-union employees who is suspected of some form of workplace misconduct. The employee tells you that he does not want to be interviewed unless he can have a coworker present. Must you grant this request? As of June 9, 2004 the answer is "No."

But if you have followed the *Weingarten* issue your head may be spinning. Here's a brief history and where we are today. The National Labor Relations Act grants *all* employees a number of rights; it also addresses specific rights of employees who are represented for collective bargaining purposes (unionized workers). In 1975, the U.S. Supreme Court held in *Weingarten* that the Act gave union members the right to have a representative present at an investigatory interview that might lead to the discipline of that employee. *Weingarten* did not address whether this right applied to non-union employees. In 1982, the NLRB considered this question for the first time in *Materials Research* and held that the *Weingarten* right did apply to non-unionized settings as well.

Three years later, the Board abandoned that position and held that this right did not apply in the absence of a certified or recognized union. Then, three years after that, in 1988, the Board considered the same question again in *E.I. DuPont & Co.* and arrived at yet a slightly different conclusion, maintaining

that the right to a representative in an interview that may lead to discipline still did not apply to the non-union worker but that the interpretation was "permissible" and not "mandatory." *DuPont* remained the law for 12 years until the Board overruled it in *Epilepsy Foundation* in 2000. And here we are, four years later back where we were with the 1988 decision holding that this right to representation does not apply to non-union workers.

### Why the Change?

The NLRB elucidates four points over several pages of its decision but this paragraph seems to sum things up:

"Employers face ever-increasing requirements to conduct workplace investigations pursuant to federal, state and local laws, particularly laws addressing workplace discrimination and sexual harassment. We are especially cognizant of the rise in the number of instances of workplace violence, as well as the increase in the number of incidents of corporate abuse and fiduciary lapses. Further, because of the events of September 11, 2001 and their aftermath, we must now take into account the presence of both real and threatened terrorist attacks. Because of these events, the policy considerations expressed in *DuPont* have taken on a new vitality. Thus, for the reasons set forth below, we reaffirm and find even more forceful the result and the rationale of *DuPont*."

### Can They Do That?

The U.S. Supreme Court may have said it best, "Cumulative experience begets understanding and insight by which judgments...are validated or qualified or invalidated. The constant process of trial and error...differentiates perhaps more than anything else the administrative from the judicial process."

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*Christine Walters is an independent consultant and the Sole Proprietor of FiveL Company (www.fivel.net), "Helping Leaders Limit their Liability by Learning the Law." She can be reached at christine@fivel.net.*

### Trouble at the Top?

We heard earlier this week that another NABE friend had "resigned, and, further, the terms of my separation of employment have been mutually agreed upon, and resolved in a mutually satisfactory manner." A&F's e-newsletter committee thought it would be valuable to rerun an article originally published in the May/June 2004 issue of *Bar Leader* magazine, analyzing the uncertain climate where "prominent leaders of state and local associations suddenly left their posts over the past year." Unfortunately, bureaucratic red tape prevented a timely "approval" of such an action.

## **You Bought It, Now Audit:**

*Your technology infrastructure can be audited -- and probably should be*

*By Bob Violino*

These days, audits are rarely a source of solace, but finance executives who find IT daunting may actually be relieved to know that IT audits are suddenly in vogue, and provide exactly the sort of big-picture view that most CFOs need. IT audits are not, as you may have guessed, a matter of pure accounting. The term covers a lot of ground, but in general it can be thought of as the processes by which organizations evaluate virtually any aspect of their technology controls, capabilities, and performance. While IT audits have been conducted by some companies for years, they're moving into the mainstream as regulatory compliance, risk management, and information security become higher corporate priorities.

If done properly, experts say, IT audits not only reveal weaknesses in compliance, security, and other areas but also help companies save money by finding ways to use IT hardware and software more efficiently and get a better handle on technology assets. Organizations can use IT audits to ensure that their technology initiatives are in sync with business goals and practices.

"These audits provide our CIO with an independent and objective review of his areas to ensure data resources are protected, appropriate internal controls are in place, systems are designed and developed to meet our business needs, and internal system resources are used

effectively and efficiently," says Ken Askelson, IT audit manager at retailer J.C. Penney Co. in Plano, Texas.

There are many types of IT audits that cover a broad range of technologies and processes. One type assesses IT governance, determining how well the IT department is managed and staffed, and how efficiently it supports business operations. Information-security audits examine security policies and such technologies as firewalls, as well as analyze the integrity of networks, databases, operating systems, Web servers, and applications.

Audits can focus on such major IT assets as ERP systems or on individual applications like payroll and accounts payable. Some audits evaluate the effectiveness of business-continuity and disaster-recovery programs, and others make sure that organizations have adequate and up-to-date software licensing in place. Still others are dedicated to ensuring that organizations are in compliance with such regulations as the Sarbanes-Oxley Act of 2002 and the Health Insurance Portability and Accountability Act.

IT audits frequently begin with a risk assessment, in which an organization obtains an overview of the major systems and applications used to support critical business processes. The intent is to identify existing or potential areas of risk that should be addressed in future

IT audits, says Paul Rozek, director of technology services at Jefferson Wells International, a Brookfield, Wisconsin, consulting firm that has seen its IT-audit work increase by 40 percent between 2002 and 2003. Organizations can then prioritize the audits based on the level of risk. That initial assessment can also give executives a good sense of the systems the organization has in place, and whether the company has sufficient expertise and staff resources to conduct subsequent, more-focused audits. If not, the organization will have to consider getting help from an outside expert (see "Deciding Who Does What," at the end of this article).

The actual audits of individual aspects of IT, which can last a few weeks or several months, involve testing the technologies and controls that are in place, to make sure they are meeting corporate expectations. Once audits are complete, reports are sent to the appropriate managers so they can address specific needs.

For example, an information-security audit report would go to the CIO or other senior IT executive, as well as to the chief information security executive. Rozek says many IT-audit reports include an executive summary for higher-level officers and more detailed information for the people who will actually be putting necessary fixes in place.

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## Bought It, Now Audit

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“As with a financial audit, always think of who the audit audience is,” says Rozek. “Make sure the report has insights that executive management will understand, and also give sufficient information from a process-control and technology-control perspective.”

Experts say CFOs should be copied on most or all IT-audit reports. “The CFO should absolutely rely on IT audits that affect the programs or operations for which they are responsible to provide assurance that the proper data security and controls” are in place, says Paul Hoshall, principal of Hoshall Associates, an IT-audit training and consulting firm in Fairfax, Virginia. “Without audits, I don’t know how you can do this.”

Michael Cangemi, president and CEO (and former CFO) of consumer leather goods designer Etienne Aigner Group in Edison, New Jersey, agrees that finance chiefs should push for IT audits and always be briefed on their findings. “When you do audits, you gain a basic control over the entire IT environment and systems. What better way is there for a CFO to verify that the company’s investment in IT is working the way the board and management expect it to?” asks Cangemi.

Cangemi has a special appreciation for the audit function. He began his career in the 1970s working in IT auditing before advancing to high-level positions in finance, and authored the book

*Managing the Audit Function* (Wiley & Sons), a new edition of which came out in 2003.

Etienne Aigner relies on an auditing firm to examine its critical business systems, such as those used for an electronic trading network with major retailers, a sales force automation program, and its growing Internet business. Cangemi says the audits make sure that systems are meeting standards for performance.

At J.C. Penney, the internal auditing department, which includes an IT auditing group, reports to the executive vice president, secretary, and general counsel, and works closely with the CFO and other members of senior management to develop annual audit plans and coordinate audits of key areas within the organization. The IT audit group audits such areas as telecommunications systems, business applications, network architecture, data-center operations, change management, disaster recovery/business continuity, electronic commerce, information security, and database security. And, of course, Sarbanes-Oxley.

IT audits do more than provide peace of mind or point out room for improvement: they can also zero in on potentially serious problems. The 15-member IT audit team at Depository Trust & Clearing Corp., for example, might conduct a weekend test of a backup system to simulate an abrupt shutdown, to ensure that it switches operations to an alternate site within seconds, as

it is supposed to do. Since auditors look at communications and overall responsibilities across functional departments, they help pinpoint any breakdowns that could have an adverse impact on the organization, according to senior IT auditor Fredric Greene.

How frequently IT audits should be conducted depends on the type of audit and the individual needs of the organization, says Fred Heller, an IT-audit expert at Jefferson Wells. Certain IT assets, such as key business systems and applications, should be audited at least once a year. Others, such as data centers, can be audited every three years or so. “Companies can do multiple audits at the same time or on a cycle basis,” says Heller. “Sometimes they need to do specific audits [at a certain time] because of a high risk, and the next year they have a different cycle.”

A growing number of companies are conducting audits of extensive IT projects — such as an infrastructure overhaul or a rollout of mobile computing devices — to ensure that initiatives are running on time and on budget. “An IT audit can provide an assessment of how a project is being managed, how the systems and applications are working, and whether you can move to the next phase,” says Heller. Many involved in IT audits stress that they are now a fundamental part of overall IT management.

*Bob Violino is a freelance writer in Massapequa Park, New York.*

## **Liability is Only a Keystroke Away:**

### *The Importance of Drafting Effective Computer Use Policies*

By Neil E. Duke, Esq.

Electronic monitoring by employers of its employees is a common practice. According to the American Management Association, roughly 75% of all companies routinely engage in this type of activity. Various factors are cited for this reality, to include: (1) regulatory compliance by companies in regulated industries; (2) reducing potential liability from discrimination suits, especially hostile environment claims; (3) for performance reviews; (4) to measure productivity; and (5) to protect trade secrets and other confidential information.

Acknowledging this trend, the *Los Angeles Times* offered the commentary that, “[g]iven the liabilities employers face, they have little choice but to monitor employee activity on the Internet and even in interoffice communications, and given the technology available to employers, every employee should assume that his or her interaction with a workplace computer is happening in plain view of the boss.” In fact, one prominent jurist has gone further by suggesting that, given the widespread misuse of computers by employees, it might be “irresponsible” for a company not to maintain such a policy.

In spite of this general trend, a spate of cases have been filed by employees within recent years, seeking to challenge the legitimacy of an employer’s right to monitor computer use. These cases serve to highlight the critical need of developing computer use policies. In one particular case, a company fired an employee after discovering that the employee had utilized his company-provided take home computer to access pornographic material. This type of usage conflicted with the company’s policy, which stated that computers were only to be used for business purposes and prohibited the use of the company’s

computers to access obscene materials. Notwithstanding this clear policy, the employee filed suit against his employer alleging that his privacy rights had been violated and challenged the company’s ability to access the computer’s stored materials. Suffice it to say that the court was unimpressed with the employee’s argument and upheld the company’s right to access the data stored on the home computer. In ruling against the employee and in favor of the company, the court reasoned that the existence of the company’s computer use policy defeated the employee’s claim that he possessed any reasonable expectation of privacy.

Clearly, when it comes to drafting workplace policies, an ounce of prevention is worth a pound of cure. Computer use policies must definitively place employees on notice that their personal use of company computers is subject to monitoring. As previously noted, in an ever expanding area of law, any employer that fails to develop such a policy, places itself at substantial risk.

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*A properly worded policy can help you justify the words, “Your Fired!”*