Utah Bar JOURNAL

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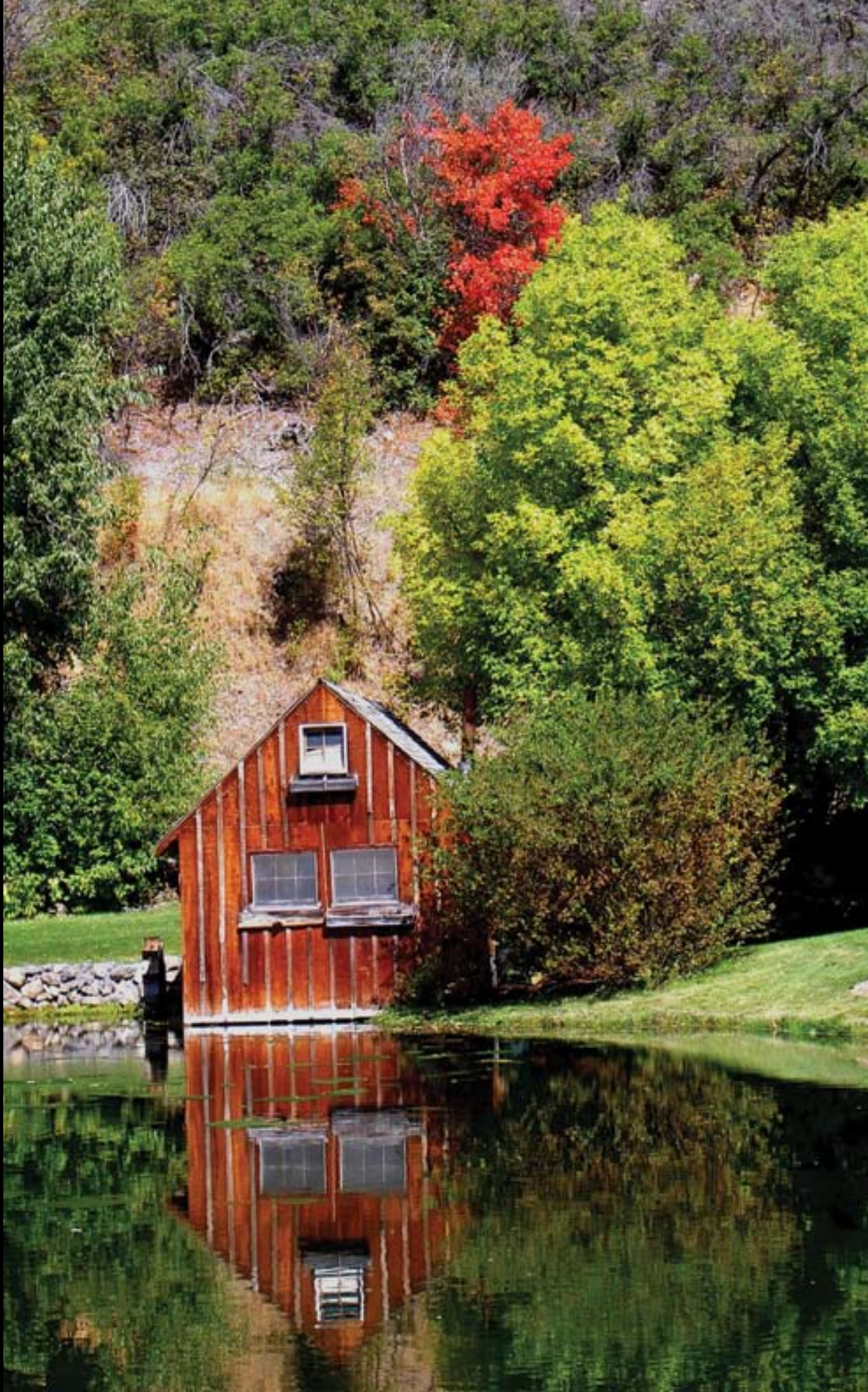

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MISSION OF THE BAR: *To represent lawyers in the State of Utah and to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of, the law.*

COVER: South Fork, Provo Canyon, by first-time contributor Cristina Pianezzola, Orem Utah.

The *Utah Bar Journal* is published bi-monthly by the Utah State Bar. One copy of each issue is furnished to members as part of their Bar dues. Subscription price to others, $30; single copies, $5. For information on advertising rates and space reservations visit www.utahbarjournal.com or call Laniece Roberts at (801) 538-0526. For classified advertising rates and information please call Christine Critchley at (801) 297-7022.

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Letters Submission Guidelines:

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.

2. No one person shall have more than one letter to the editor published every six months.

3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal* and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.

4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.

5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Rules of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Bar Commissioners or any employee of the Utah State Bar to civil or criminal liability.

6. No letter shall be published which advocates or opposes a particular candidacy for a political or judicial office or which contains a solicitation or advertisement for a commercial or business purpose.

7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the Editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.

8. The Editor, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected.

Cover Art

Members of the Utah State Bar or members of the Paralegal Division of the Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should send their photographs, along with a description of where the photographs were taken, to Randall L. Romrell, Esq., Regence BlueCross BlueShield of Utah, P.O. Box 30270, Salt Lake City, Utah 84130-0270, or by e-mail to rromrell@regence.com if digital. If non-digital photographs are sent, please include a pre-addressed, stamped envelope for return of the photo and write your name and address on the back of the photo.

Interested in writing an article for the Bar Journal?

The Editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine.

If you have an article idea or would be interested in writing on a particular topic, contact the Editor at 532-1234 or write:

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Submission of Articles for the Utah Bar Journal

The *Utah Bar Journal* encourages Bar members to submit articles for publication. The following are a few guidelines for preparing your submission.

1. Length: The editorial staff prefers articles having no more than 3,000 words. If you cannot reduce your article to that length, consider dividing it into a "Part 1" and "Part 2" for publication in successive issues.

2. Format: Submit a hard copy and an electronic copy in Microsoft Word or WordPerfect format.

3. Endnotes: Articles may have endnotes, but the editorial staff discourages their use. The *Bar Journal* is not a Law Review, and the staff seeks articles of practical interest to attorneys and members of the bench. Subjects requiring substantial notes to convey their content may be more suitable for another publication.

4. Content: Articles should address the *Bar Journal* audience, which is composed primarily of licensed Bar members. The broader the appeal of your article, the better. Nevertheless, the editorial staff sometimes considers articles on narrower topics. If you are in doubt about the suitability of your article for publication, the editorial staff invites you to submit it for evaluation.

5. Editing: Any article submitted to the *Bar Journal* may be edited for citation style, length, grammar, and punctuation. Content is the author's responsibility – the editorial staff merely determines whether the article should be published.

6. Citation Format: All citations should follow *The Bluebook* format.

7. Authors: Submit a sentence identifying your place of employment. Photographs are encouraged and will be used depending on available space. You may submit your photo electronically on CD or by e-mail, minimum 300 dpi in jpg, eps, or tiff format.

Greetings

by V. Lowry Snow

I'd like to begin this first message by simply saying how immensely honored I am to be your President. My past several years of service on the Bar Commission have provided me a greater level of appreciation for the quality of our organization. I readily embrace the office with its responsibilities and I am committed to making it my first professional priority of this 2007 – 2008 annual Bar year. I sincerely thank you for your vote of confidence and also for your expressions of support.

The task of leading this organization from St. George, while challenging, is made more practicable by utilizing today's technology. Telephone and internet access have reduced the distance dramatically and when necessary, I can choose from five daily flights which allow me to arrive in Salt Lake City in just over an hour. More importantly, though, my job is made much more manageable because of some very capable people who serve with me and who are equally committed to the continued success and improvement of the Bar. I give credit and thanks to the exceptional women and men who comprise our Bar Commission and also to our skilled and dedicated Bar staff, all of whom will make my service more effective.

I would like to provide you a preview of some of the projects the Commission will be working on in the upcoming year – a few landmarks from which we can chart our course and measure our progress.

Long-Range Strategy Plan
This process has allowed us to step back to identify the long range values and objectives of the Bar. Commissioners and some members of staff have already been involved in this process. We anticipate the plan being finalized by late fall.

Operations Review
It is healthy for any organization to review its internal operations in order to evaluate their overall effectiveness and efficiency. The review of Bar operations and programs will get underway during my term with members of the Commission playing an important role in this task. Final reports will be available for review and comment by our membership.

Mentoring Program Review and Development
While still in committee review, it is anticipated that the mentoring committee will provide its report and recommendations within the next few months.

On-line Lawyer Referral Service
We anticipate the construction of a simple and effective internet-based lawyer referral tool which will allow the public to easily identify lawyers within their locale who have experience in an area of law that will be helpful to the consumer.

Pro Bono and Access to Justice
Coordination of the efforts of the Bar and its many members who unselfishly contribute thousands of hours and dollars in fulfillment of our obligation to members of society who desperately need legal assistance but who cannot afford a lawyer.

There has been some discussion relative to an increase in Bar dues, but I firmly believe we can accomplish all we have planned without seeking an increase during my term. I look forward to working with all of you over the next term to meet the challenges set forth above. As I'm sure you know, it won't be easy, but worthwhile achievements rarely are. I am confident that the year we will spend working together on these projects will be not only rewarding, but beneficial to all members of the Bar.

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Ten Ways the Bar Can Be Improved

by E. Russell Vetter

The Utah State Bar (the Bar) and its Bar Commission (the Commission) are at a crossroads that may lead to a request to increase Bar dues. In the Spring of 2005, the Utah Supreme Court (the Court) requested that the Bar perform an audit of its operations. As a member of the Bar Commission at that time, I was hopeful that the audit would lead to meaningful changes at the Bar to better address the needs of Bar members, significantly improve communications with members, and fulfill a component of the Bar's mission to serve the public. More than a year later, in August of 2006, a very limited audit began. The audit focused on Bar governance, the activities of the Commission, and how the Commission interacts with the Court and the Bar's Executive Director. The audit was performed by members of the Grant Thornton accounting firm. I was one of a few members of the Bar interviewed for the audit.

Bar members, in general, have not been informed of the events surrounding the audit, and there has been no follow-up with those who were interviewed. A brief summary of the Grant Thornton audit was placed on the Bar's website in April, almost two years after the Court requested an audit. In June, the audit (which was completed in January) was also placed on the Bar's website. Unless Bar members are carefully reading the Bar's website or Commission meeting minutes, they likely would have no knowledge that the audit was conducted.

In May, the Court met with members of the Commission to discuss the audit. Accounts of that meeting indicate a consensus among the Court and the Commission that the audit was not particularly helpful in providing guidance for how the Bar might be improved and not worth the $59,894 paid to Grant Thornton. Unfortunately, Bar members have no information about the Court's meeting with the Commission (at the time this article was written). The Bar's communication to members about these events provides an example of changes the Bar needs to make in the way it operates.

I believe the Bar can and should be improved without any need to increase Bar dues. Bar members deserve more for their dues, and more should to be done to fulfill the Bar's mission to serve the public. My background working with the Bar gives me some unique insights into Bar operations over the past 16 years[1] and leads me to the following ten recommendations.

Recommendation 1 – Recognize that the Bar is a Quasi-Governmental Entity and Operate with Greater Transparency

The Bar is a quasi-governmental entity. Membership in the Bar is not voluntary for those who wish to practice law in Utah. The annual fee that all members pay is like a tax or governmental licensing fee. Moreover, a significant portion of membership dues are paid with taxpayer dollars (approximately 20 percent of Bar members are government attorneys whose licensing fees are paid with public funds). Many practices that may be appropriate in a for-profit entity are not appropriate in a quasi-governmental, non-profit organization.

Public entities conduct their business in the open and strive to communicate with their constituents concerning all matters of importance. This provides the best model for management of the Bar. Following this model, the Bar can improve its representation of all members, properly manage its finances, and carry out its core functions of admissions, licensing, and discipline.

While Commissioners are bright and talented and have experience managing small to medium-sized for-profit law firms, they generally lack the experience and training to serve as a director of a quasi-governmental entity. Too often, the Bar fails to act in the open and properly communicate with its members. Furthermore, concerning Bar governance, too many Commissioners act as if there is an implicit understanding that Commissioners should not worry about details of Bar operations or question the decisions or practices of the Executive Director, Bar President, or the Commission Executive Committee.

RUSTY VETTER practices law in Salt Lake City and has been a member of the Bar since 1986.

When information is provided to the Bar's general membership, it comes in a form that is not adequate to accurately reflect what the Bar is doing. For example, the financial statements prepared by the Bar are confusing and do not show clearly the amounts spent on individual projects. In addition, members have less than 30 days to review and comment on the Bar's annual budget. Information about all Bar activities should be provided to Bar members in the same manner that governmental entities provide information to the public. The Bar should conduct its meetings consistent with the Utah Open Meetings Act and proactively seek input from Bar members as often as possible.

Recommendation 2 – Develop and Implement a Strategic Plan

The Commission needs to develop a meaningful strategic plan and establish a process to assure that it is followed and regularly updated. The creation of a strategic plan is one of the best ways to assure that an organization is fulfilling its mission and using its resources effectively. A strategic plan has a long-range perspective that keeps the interests of the organization from being subjugated to the interests of individuals. It also provides a foundation for developing successful initiatives. Any well run, responsible organization has a strong strategic plan.

Approximately ten years ago, the Commission prepared a strategic plan. That plan admonished Commissioners to update the plan every five years. This did not happen. In fact, such plans should be updated annually. Because the Bar does not have an active strategic plan, each new Bar president implements initiatives that too often fail to take into consideration the efforts of prior Bar presidents. By adhering to a strategic plan, extraordinary expenses, such as a celebration for the Bar's Seventy-Fifth Anniversary or Dialogue on Freedom, can be budgeted and planned over the long term. The Bar now appears to be committed to work on a long-range plan, but the Commission must be committed to update its plan regularly to manage the Bar effectively.

Recommendation 3 – Improve Communications with Bar Members

The Bar's communication with its members should be improved. The Bar needs to reach out to members more effectively and listen to their concerns. Efforts to communicate with Bar members on important matters are inadequate. The Bar does little to encourage input from members, and when input is given, there is no way to know whether the input is being considered. It has been approximately 10 years since the Bar last conducted a meaningful survey of its members. Inexpensive web-based survey tools provide an opportunity to survey Bar members efficiently.

The quality of information provided to members should also be improved. The Bar should consider whether it is providing too

much unimportant information on its website, which may result in members ignoring valuable information. Because the *Bar Journal* is only published every other month, much Bar-related information is out of date by the time it reaches Bar members.

Better communication would also occur if the Bar made efforts to get more members involved. Over the past several years, there has been very little turnover in leadership positions with the Bar's key committees and with the Commission. If such positions were only held for two or three-year terms, more Bar members would learn through involvement how the Bar operates and could contribute to improving the Bar.

Recommendation 4 – Change the Make-up of the Commission

The make-up of the elected voting members of the Commission does not reflect the membership of the Bar. The vast majority of voting Commissioners are men who work in private law firms. Unfortunately, this leads to priorities of the Bar that too often appear to be similar to an exclusive fraternity.

Normally, fraternal organizations are voluntary. If a member believes that dues are not being spent wisely, he or she can resign from the organization. Since membership in the Bar is mandatory, Bar members do not have this option. The Bar needs to recognize the consequences of its present make-up and move in directions that are more inclusive to more members.

To implement changes at the Commission, the Court should appoint two or more attorneys, who are not elected, to serve on the Commission. Such individuals would likely be knowledgeable about the history of the Bar and different aspects of the nature of the legal practice. The two public members that the Court currently appoints should not be replaced, but the Court should not expect that they will have the background in the Bar that appointed attorneys would have. The Court could also use these appointments to assist in obtaining more balanced information concerning the operations of the Bar and provide advocates for responsible board governance.

The Bar should also rethink the current geographical basis for appointing voting Commissioners. Consideration should be given to reducing the number of voting Commissioners based on geography and adding voting members appointed by various Bar Sections or other groups such as the minority bar association, women lawyers, government attorneys, corporate counsel and young lawyers. For example, Commissioners from the First Division (representing Northern Utah Counties) and the Second Division (representing Davis and Weber Counties) represent 124 and 557 members respectively. The interests of the members within these two Divisions should be similar. By contrast, the interests of women, minority, corporate, and government lawyers are very different and deserve better representation by the Commission.

Recommendation 5 – Curtail Commission Expenditures

Many Commission expenditures are made without adequate scrutiny by the entire Commission. Commissioners enjoy benefits that are not provided to directors of other quasi-governmental or non-profit organizations. Commissioners spend the Bar's money (funded by members' mandatory dues) with very little supervision. Some Commission expenditures are appropriate, while other expenditures are not justified.

I estimate that the Commission has incurred the following expenditures this past fiscal year (July 1, 2006 to June 30, 2007):

1. $20,000 - 30,000 – Commissioners' (elected and ex-officio) attendance at Annual Convention in Newport Beach, CA;
2. $5,000 - 7,000 – Past Presidents' dinner in Newport Beach, CA;
3. $4,000 - 6,000 – Attendance at ABA Annual Meeting in Honolulu, HI;
4. $16,946 – Bar's Seventy-Fifth Anniversary Dinner (amount from April 2007 financial statements);
5. $2,000 - 4,000 – Attendance at mid-year ABA Meeting in Miami, FL;
6. $10,000 - 15,000 – Commissioners' (elected and ex-officio) attendance at Spring Convention in St. George, UT;
7. $7,000 - 10,000 – Commissioners' attendance at Western States Bar Conference at Big Island, HI;
8. $2,000 - 3,000 – Commissioners' Meeting in Vernal, UT;
9. $7,000 - 10,000 – Commissioners' (elected and ex-officio) annual retreat at Zermatt Resort, Midway, UT.

Estimated total: $73,946 - $106,946

These estimates are supported by the Bar's own financial statements. The Bar's April, 2007 Financial Statements reflect the following expenses: $17,179 for Commission food and beverage; $12,901 for President's expenses; and $76,974 for Commission education (which was $43,644 over budget). These three items, plus the $16,946 for the Seventy-Fifth Anniversary Dinner, total $124,000, which likely does not include the expense for the Bar retreat that occurred in June.

The value of these expenses is brought into question when one reviews the Commission's agenda for its July meeting held in Sun Valley, Idaho, the location of this year's Annual Convention. The Commission meeting was scheduled to last 2.5 hours, but only one hour was allocated to discussion of substantive issues.

The Commission materials for the meeting detail the expenses that are reimbursable for the 24 Commissioners – these include mileage or airfare, a per diem for three days of meals and incidentals, and three nights' lodging. The July Commission meeting does not need to be held at the location of the Bar's Annual Convention and the associated costs are not justified.

I doubt that very many Commissioners previously realized how much is spent each year on these types of activities. These costs represent a pattern of expenditures over the past several years. Each individual expenditure may appear to be justified; however, taken as a group, it is clear that far too much is being spent on out-of-town travel and social activities. Some justify the costs as necessary to help build collegiality among Commissioners and with leaders of other bars, but I believe that the cost exceeds the benefit that the Bar receives.

Others might argue that these expenses are necessary to obtain participation of volunteer board members. There is no evidence that this is true. Board members of other law-related entities do not receive these benefits. Furthermore, the board members of the Legal Aid Society, And Justice for All, and Legal Services all make significant financial contributions to these non-profit organizations. These boards also include individuals who have significant management experience and are some of the most respected lawyers and business leaders in Utah.

A reduction of Commission expenses could fund a full-time Bar employee to manage lawyer referral and pro bono programs. This would benefit hundreds of Bar members and members of the public. Even with such a reduction, there would still be adequate funds available for appropriate Commission activities.

I recognize that as a member of the Commission, I received these benefits and implicitly supported these expenditures. Commissioners receive little training on how to serve as responsible board members and lack any formal ethical guidelines to help them in fulfilling their roles as fiduciaries of the Bar. I now regret that I did not speak up against these practices more often when I was a Commissioner.

Recommendation 6 – Separate Commission Expenses from CLE Programs and Reduce the Cost of CLE Programs

In the past, costs of the Commission's activities have indirectly been funded through over-priced CLE programs. To balance the budgets of the Spring and Annual Conventions, the registration fees have been inflated to pay for Commission-related expenses. This is particularly inappropriate because CLE is mandatory for Bar members. According to the Bar, this is no longer the case.

The Bar needs to look at the quality of its programs and consider why other groups can offer high quality programs at a much lower price. To compare the price of other CLE programs, each

year the Utah Municipal Attorneys' Association sponsors a CLE program, with 12 hours of CLE credit, held in Southern Utah in May. The registration fee for the three-day program was $100 for each city attorney and $50 for each additional attorney. By contrast, the Bar charged $225 for registration to attend the Spring Convention this year for a two-day program. While the Spring Convention registration fee is lower than other CLE programs and might be considered a good value, the Bar is missing out on an opportunity to provide a significant benefit to Bar members by offering a low-cost CLE program.

Recommendation 7 – Adopt a Code of Ethics for the Commission and Bar Staff

It appears from the Commission's materials for the July Commission meeting that the Bar has instituted a new Conflict of Interest Policy. While this is a good start, a more expansive code of ethics is needed. A good beginning point is the standards of ethics adopted by the Utah Nonprofits Association. The standards require nonprofit boards to adopt rules that address integrity, loyalty, openness, accountability, stewardship, and excellence. While I do not know whether the Bar has any ethical guidelines for its staff, such guidelines would certainly be appropriate.

Recommendation 8 – Conduct a Preliminary Audit of Bar Operations

The Grant Thornton audit recommends that an operations audit be conducted. Instead of paying for another audit performed by an outside auditor (and waiting for several years), the Court should appoint a qualified individual to identify potential areas of concern by interviewing Bar staff members and reviewing the Bar's checking and credit card records. The interviews and review of Bar expenditures could be done relatively quickly. By conducting this preliminary audit first, a decision could be made how best to pursue a formal independent audit.

Recommendation 9 – Revive Programs that Benefit Bar Members and the Public

Over the past several years, the Bar has encountered increasing difficulty in balancing its budget. Some sources of income have decreased and expenditures have grown. As a result, the Bar has cut back on several programs that have benefited Bar members and the public. For example, the number of *Bar Journals* published has been reduced by one-third. The Lawyer Referral Service has been outsourced, reducing member participation and decreasing its value to the public. The Bar's office of Pro Bono Services has been largely eliminated. The Bar should consider reducing other expenditures as part of a strategic plan to provide services that fulfill its mission to serve the public.

Recommendation 10 – Bar Members Should Get Involved

The legal profession is one of only a few that require an oath of office. Even fewer boards require members to take an oath of office, such as that sworn by the elected Commissioners. Keeping the public trust is a key component of both oaths. Bar members should hold Bar leaders accountable for maintaining the public trust. More Bar members should be involved in deciding how the Commission will conduct its business in the future.

According to recent Commission meeting minutes and Gus Chin's article in the last issue of the *Bar Journal,* the Bar is going to consider whether it should seek a dues increase. Meanwhile, the Bar has recently paid off the mortgage on the Law and Justice Center and holds $1 million in cash reserves. Bar members should scrutinize any request for a dues increase, demand that the Bar first look for savings to be realized through cutting expenses, and conduct the recommended operations audit before consideration is given to increasing dues.

There are many other ways the Bar could be improved. Bar members should express their concerns and ideas for improvement by contacting the Bar President, Commissioners, and the Bar's Executive Director – their phone numbers and email addresses are all available on the Bar's website. I hope you will contact them and make your suggestions for improving the Bar.

1. In 1991, Rusty was appointed to the Bar's Character and Fitness Committee. A few years later, he was asked to serve as chair of the Bar Examiner and Bar Exam Review Committees, which also included service on the Bar's Admissions Committee. After several more years, he became Co-Chair of the Character and Fitness Committee. In 2002, Rusty was elected to a seat on the Bar Commission and in 2004, served as a member of the Commission's Executive Committee. In 2005, he served as a volunteer mentor for the Bar's Office of Professional Responsibility.

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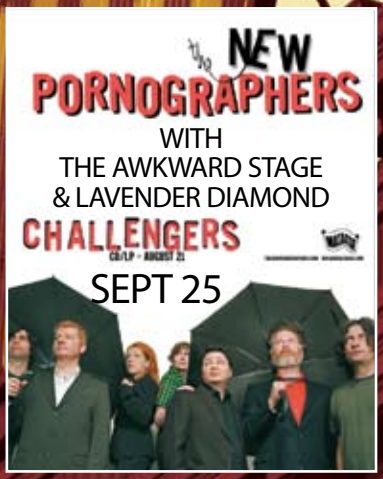
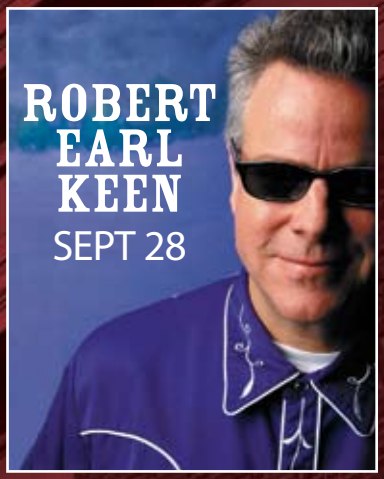
GEORGE THOROGOOD & THE DESTROYERS
SEPT 24



THE NEW PORNOGRAPHERS
WITH
THE AWKWARD STAGE
& LAVENDER DIAMOND
CHALLENGERS
SEPT 25



ROBERT EARL KEEN
SEPT 28

PINBACK
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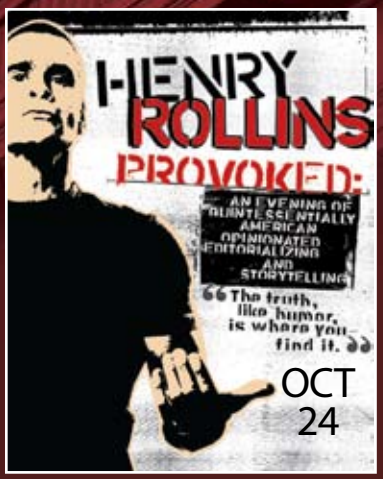
FRIGHTENED
RABBIT
OCT 20



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An Open Discussion of 10 Ways

by V. Lowry Snow, Utah State Bar President
and on behalf of the Board of Bar Commissioners

This article will provide a response to the suggestions of our colleague Russell Vetter on how the Bar can be improved. This response is not so much in the nature of a rebuttal as it is a discussion of the issues raised. Indeed, the Bar Commission recognizes there are ways it can and should improve, and agrees with some of the suggestions of Mr. Vetter, while respectfully disagreeing with others. We welcome and encourage from our members your questions and comments on or about Bar operations and governance. This is, in fact, your Bar.

As an initial matter, we appreciate Mr. Vetter for his candor and his desire to raise issues regarding the Bar he feels are of importance. It is through this type of dialogue that the interests of the Bar will be served and such member interest can ultimately lead to the Bar's improvement.

As mentioned by Mr. Vetter in his article, at the request of the Court the firm of Grant Thornton recently completed a review of the Bar and its governance. This review was delayed for a period due to the difficulty of finding a firm that would perform such a review and do so at a cost that was not prohibitive. Because of concerns raised by Grant Thornton about proprietary issues in respect to making the report public, it was initially summarized on the Bar's website rather than presented in its entirety. However, the Bar Commission felt that the report was of sufficient importance that it should be available to all Bar members, notwithstanding the reviewing corporation's proprietary concerns. Consequently, and after a period of discussion with the reviewers, the entire report has been available on the Bar website for several weeks. Beginning August 1, members have had the opportunity to obtain a full copy of the report from the Bar office. We invite our members to become familiar with this report.

Mr. Vetter's suggested changes and the Grant Thornton report's recommendations mirror each other in many respects. For example, both suggest that the Bar develop and implement a long-term strategic plan, and both discuss the need for a further operational review of the Bar. However, the two differ in some regards. For example, the Grant Thornton report concludes that the current level of communication between the Bar and its members is sufficient, while Mr. Vetter asserts that it is lacking. Grant Thornton meticulously analyzed the composition and membership of the Bar Commission and found it to be adequate, while Mr. Vetter asserts that the makeup of the Commission should be altered.

One of the issues raised by Mr. Vetter was the expenditure of funds by the Commission for various meetings and events. A significant portion of the expenditures highlighted relate to the ongoing participation of the Commissioners in governance meetings, including attendance at annual and spring conventions where the business of the Bar is conducted. For example, the Bar Commission meeting in Sun Valley included reports and discussion related to the long-term strategy plan. Additionally, the training and education Bar Commissioners gained in attending various leadership conferences the ABA and the National Council of Bar Presidents offered have resulted in forward-thinking leadership and governance of the Bar. We believe prudent management of the Bar requires an ongoing investment in the education, training, and development of our 24-member Board. The amount of these expenditures for that purpose, as compared to another organization of like size, is moderate by any measure. While some of the events Mr. Vetter referred to that took place during this past year were at seemingly desirable locations, that is not the usual case in most years. Furthermore, the 75th Anniversary Dinner was, by its very nature, a one-time event.

Every year Bar members are invited to provide comments on the proposed budget for the upcoming year, including proposed expenditures for meetings and activities of this type. We would strongly advocate that every Bar member take advantage of this opportunity to review the Bar budget and let the Bar Commission know of any concerns. Commissioners are sensitive to the trust we carry for Bar members, and to the need to account properly and publicly for all expenditures. Our goal is the betterment of the Bar, and we would hope that the membership will bring to our attention any matter of concern. Additionally, any discussion of a Bar dues increase at this juncture is probably premature. It has not yet been studied to any extent by the Commission.

V. LOWRY SNOW is the current President of the Utah State Bar and contributes this article on behalf of the Board of Bar Commissioners.

Ultimately, it is a matter for the Court to decide after careful consideration and input from membership.

Mr. Vetter has raised ten suggested changes in his article, some of which have been touched on above. In an effort to clarify the Bar's position on these points, we will briefly summarize our response to each of his suggestions.

Recommendation 1 – Recognize that the Bar is a Quasi-Governmental Entity and Operate with Greater Transparency with Open Meetings

It is asserted that the Bar operates essentially in the public sector, funded primarily by mandatory membership dues, and therefore has the appearance of a quasi-governmental entity. While we do not wish to delve too deeply into the nuances regarding what qualifies as a quasi-governmental entity, there are at least conceptually some parallels. Commissioners view their role as public servants to members of the Bar when deciding the use of all Bar funds, whether those funds originate as membership dues or otherwise, and diligently strive to make wise use of every dollar received. As for open meetings, the Bar Commission meetings, with the exception of executive sessions wherein personnel issues are discussed, are open to all desiring to attend. Moreover, the agendas and minutes for these meetings are available to all members on the Bar's website. We encourage all Bar members to involve themselves in these meetings and to review the records relating to all business conducted by the Commission.

We strongly disagree with the assertion that the Bar Commission is lacking in experience and training. The Commission is made up of an array of individuals who represent wide and varied backgrounds, experience and training, not only in the legal profession, but also from government, higher education, business, corporate, nonprofit, financial, and other professional sectors. Many serve or have previously served on other public and private boards requiring similar leadership skills. Each Commissioner brings valuable insights and guidance to the group. We can assure members that Commissioners – being lawyers – are not passively engaged in their role. All decisions of the Commission requiring a vote are subject to debate and it is not unusual for controversial issues to be debated in more than one meeting before a vote is taken. The public members of the Commission represent active and strong decision makers in this process and their opinions are afforded equal consideration.

Recommendation 2 – Develop and Implement a Strategic Plan

The Grant Thornton report also adopted this recommendation. Accordingly, and on an annual basis, the Bar Commission meets and identifies key strategies to be implemented within the next

12-18 month period. To complement these annual meetings, the Commission is working on an extended long-range strategic plan. As part of the Bar Commission's June retreat, the initial phase of this long-term strategy plan was undertaken and the plan should be finalized by year end.

Recommendation 3 – Improve Communication with Bar Members

As noted above, the Grant Thornton report did not find any inadequacy in the communication between the Bar and its members. Nevertheless, the Commission strives to find ways to increase the awareness and involvement of Bar members. For example, this year we made an effort to reach out to lawyers practicing in areas removed from the Wasatch Front by holding leadership meetings in St. George, Vernal, and Price. These meetings were combined with an informal lunch with local lawyers and judges. Our gatherings provided members the opportunity to ask questions and communicate directly with the Bar President, Commissioners, and Bar staff.

With the advent of the internet, the opportunity for rapid communication lies at our fingertips. Accordingly, and in addition to the *Bar Journal,* we issue a number of e-bulletins via email on current events. We endeavor to provide adequate electronic and other written communication that will convey important information without overburdening our membership. Communication with Bar membership is an ongoing challenge, but one we continually review and work to improve, and we would appreciate any feedback from our members with respect to the amount or content of information provided both on the website and in the *Bar Journal.* We would also remind members that one of the primary roles of each Bar Commissioner, whether elected, *ex officio* or appointed, is to act as an information resource to his/her constituency. We encourage our members to communicate with a Commissioner when they have questions or concerns. Contact information for each Commissioner is readily available on the Bar's web page as well as in the *Bar Journal.* Bar staff is also available to answer member questions.

Recommendation 4 – Change the Make-up of the Bar Commission

It is suggested that the composition of the Commission be changed so that it is less dependent on geography and more on specialized groupings within the bar, such as new lawyers, minorities, women lawyers, corporate counsel, and public sector lawyers. It is also suggested that two non-elected Commissioners be appointed by the Court to supplement the two non-lawyers currently appointed by the Court to the Commission.

The structure of the Commission including its size and the issue of apportionment of its voting members resides exclusively with the Supreme Court. In 1999, the Court formed a task force to undertake a study and make recommendations regarding Bar governance including the size of the Commission and whether there was fair representation of lawyer membership by the Commission. While the work of the task the force did not consider the specific proposal of creating Commission representation along special interest lines, it is clear from the directive of the Court issued thereafter and in response to the recommendations contained in the report that the Court believed that geographic representation on the Commission was important and should be maintained. An apportionment of Commission representatives based on classes or groups rather than geography could be problematic, given the overlap between the various groups, and the challenge of creating a fair make-up that would accurately and completely reflect the membership of the bar. Under the current structure, two non-lawyer voting members of the Commission are appointed by the Court as public members. They serve a vital function in maintaining the public trust and oversight by the Court. One of the public members traditionally appointed is a Certified Public Accountant who also sits on the Budget and Finance Committee. Both public Commissioners take an active role on all issues before the Commission, and their observations and comments are insightful and valuable. The Commission believes that the current structure which provides for public and Court oversight by two non-lawyer voting members appointed by the Court is sufficient. Finally, the Grant Thornton report examined the make-up of the Commission and found it to be adequate.

Recommendation 5 – Curtail Commission Expenditures

The issue of Commissioner expenditures has been discussed at some length previously. The Commission is sensitive to the financial responsibility it bears, and continually strives to meet financial needs and issues in a fair, impartial, and frugal manner. We will consider any constructive criticism offered by our members that is intended to lead to a more cost-effective way of conducting the business of the Bar. One portion of the operational review will include an analysis of expenditures related to Bar operations and governance, including Bar funds allocated for leadership training and related travel. It is inconsistent to argue that Commissioners are unqualified to sit on the Board and at the same time complain of the expenditure of funds for the training and education of these leaders.

It should be noted that service on the Commission requires a significant personal contribution by each member in order to fulfill their duties. Commissioners contribute untold hours of personal time out of a desire to improve the Bar, serve members, assist the Court, and provide public service. These are hours that could potentially have been billed by lawyer Commissioners in private practice and, in other cases, these hours represent

uncompensated monetary time. Being a Bar Commissioner is not a series of pleasure trips and perks. Rather, it is hard work, dedication and commitment. The Commission meets almost every month, usually in Salt Lake City, which requires repeated travel by several members of the Commission living outside of the Salt Lake metro area. Bar Commissioners also serve on sub-committees, have assignments, oversight tasks, and participate in numerous activities between Commission meetings. Commissioners take their responsibilities seriously, and are very much aware that their actions and decisions will be available for scrutiny by the Bar membership and oversight committees (such as the Court-directed Budget & Finance Committee), as well as the Court directly. Our experience has been that Commissioners conscientiously strive to fulfill their duties with integrity and frugality.

Recommendation 6 – Separate Commission Expenses from CLE Programs and Reduce the Cost of CLE Programs
It is asserted that the spring and annual conventions are priced higher than they otherwise would be, due to expenses of Commissioners attending. Contrary to this position, the Bar financial statements reflect that travel and training expenses of the Commission are separate from the CLE budget. The overall cost for each CLE event varies depending on the cost of the presentation room rentals, food, travel costs and fees for outside speakers, and publication of materials, but does not include any expense related to Commissioners' attendance. The CLE department budget is designed to essentially break even, which translates to an average cost of $25 per CLE hour and is substantially less than amounts charged by commercial providers.

Recommendation 7 – Adopt a Code of Ethics for the Commission and Bar Staff
The Commission currently has in place an ethics disclosure policy that is adhered to by both Bar Commissioners as well as Bar staff. The purpose of the disclosure is to provide information on any outside activity or involvement that may pose a conflict of interest in the decisions made by the Commission or the work done by staff. As members of the Bar, Commissioners are subject to the Rules of Professional Conduct and are accountable to the Court and have also taken a Court-administered oath. It is our position that the ethics disclosure policy and the Rules of Professional Conduct are more than adequate and that an additional ethics code would be redundant and unnecessary.

Recommendation 8 – Conduct a Preliminary Audit of Bar Operations
This was also a recommendation of the Grant Thornton report, and one in which the Commission concurs. The Commission is currently reviewing which auditing method will best serve the bar among the four alternatives provided in the Grant Thornton report, as well as the alternative offered by Mr. Vetter.

Recommendation 9 – Revive Programs that Benefit Bar Members and the Public
As noted above, the Bar commission is in the process of revising its strategic plan. In this process it has considered and is still considering the various services it can and should provide for its members and the public, and the best way to provide them. Over time, not all programs or services are found to be successful or cost effective. For example, membership in the lawyer referral service, which required a full time Bar staff member, had dwindled to just 163 lawyers before it was outsourced. Readership surveys of the *Bar Journal* indicated that the overall objectives of the publication could still be maintained by refocusing on scholarly content, reducing the number of issues published per year while realizing a cost savings. Additionally, the Bar's utilization of e-bulletins has proven to be a far more effective and less expensive alternative to the *Bar Journal* in delivering time sensitive information to our members. As for pro bono efforts, a Bar committee is currently studying pro bono work statewide, to determine the best ways to improve pro bono efforts. The Bar Commission is anxious to hear the results of this study, and to implement whatever programs will best promote the Bar's pro bono efforts based on the committee's recommendations.

The Bar is constantly striving to find new and effective ways to serve its membership and the public, and, in recent years, there have been a number of new programs that the Bar has offered. These include the new Casemaker legal research application, the Lawyers Helping Lawyers program, confidential professional counseling for members and their family members through Blomquist Hale (www.blomquisthale.com or 1-800-926-9619), and the new diversion rule program for certain disciplinary matters. The Commission continues to re-evaluate each program to ensure that it is cost-effective and fulfills its purpose. The Commission is open to and welcomes suggestions regarding what the Bar can do to best serve its members and the public.

Recommendation 10 – Bar Members Should Get Involved
The Bar Commission heartily agrees that Bar members should get involved in Bar matters and in how the Commission directs its efforts and conduct its business. We encourage comments and suggestions from members of the Bar, and we can assure you that we consider all of them.

We agree with the proposition that the Bar could be improved, and that Bar members should express their concerns and ideas for improvement to the Commission. We encourage an ongoing dialogue with you to that end, and we remain open and responsive to your questions or concerns.

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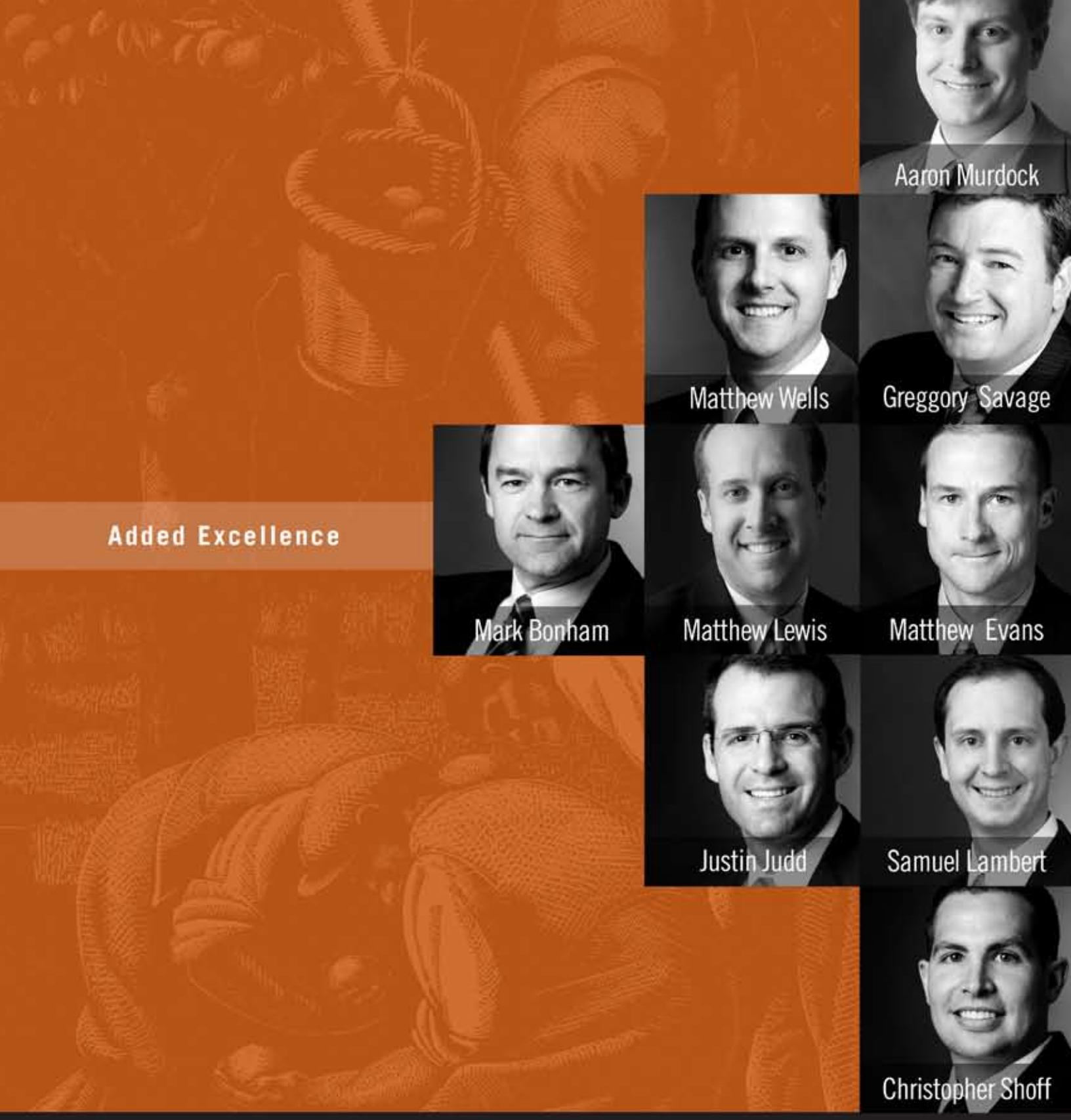

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The Supreme Court Decision in Twombly: *a New Federal Pleading Standard?*

by John H. Bogart

The United States Supreme Court, for the first time in many years, decided to take up antitrust cases. In one such case, the Supreme Court addressed the standards applicable to pleading a claim for conspiracy under the Sherman Act. The opinion should be of interest beyond the world of private antitrust litigation.

The specific issue before the Supreme Court in *Bell Atlantic Corp. v. Twombly,* 127 S. Ct. 1955, was whether a plaintiff has stated a claim for conspiracy under Section 1 of the Sherman Act, 15 U.S.C. §1, if the plaintiff alleges parallel conduct without any additional factual allegations that, if later proved true, would establish the existence of a conspiracy. The Supreme Court said no, reversing the Second Circuit. Allegations of parallel conduct alone are not enough to state an antitrust conspiracy claim. In reaching this conclusion, the Supreme Court discussed some more general issues of what a plaintiff must allege in order to state a claim under the Federal Rules and the relation of pleading to discovery. Both the direct holding of *Twombly* and the more general issues deserve discussion.

It is well established that, when challenged on summary judgment, a plaintiff may not rest on the allegations of the complaint, no matter how detailed, but must advance admissible evidence sufficient for a reasonable jury to find for the plaintiff. In the context of a Section 1 conspiracy claim, this standard entails that the plaintiff must come forward with evidence which tends to exclude the possibility of a non-conspiratorial explanation for the defendants' conduct, *i.e.,* the plaintiff must identify evidence which tends to show that there is not a legitimate or permissible business purpose for the defendants' parallel conduct. Under *Conley v. Gibson,* 355 U.S. 41 (1957) and related cases, it appeared that a plaintiff could overcome a Rule 12 motion with relatively bare-boned allegations. Indeed, read in a literal fashion, *Conley* suggested that a bare allegation of parallel conduct would support a conspiracy claim and should be ample to overcome a Rule 12 motion. Often, *Conley* was cited (and read by lower courts) to establish that a plaintiff did not need to plead much beyond the bare claims. In the context of antitrust claims, however, *Twombly* now makes clear that a good deal more is required of a plaintiff: the plaintiff must now plead facts with an eye to the standard for summary judgment.

Background

Twombly is one of a series of class actions arising from telecommunications deregulation over the last fifteen years. The Telecommunications Act of 1996 (the Act) repealed the local service monopolies of the "Incumbent Local Exchange Carriers" (often called "Baby Bells," herein "Incumbents"). Under the Act, Incumbents lost their monopolies and were required to provide access on favorable terms to "Competitive Local Exchange Carriers" (Competitors). Much of the structure of access has now fallen by the wayside. *See, e.g., Verizon Commc'n, Inc. v. Law Offices of Curtis V. Trinko,* 540 U.S. 398 (2004). In *Twombly,* the alleged class consisted of purchasers of local telephone and high-speed internet services. The plaintiffs alleged that the defendant Incumbents had (1) agreed not to compete against one another and (2) acted in parallel to prevent Competitors from entering the market by, for example, making unfair agreements with Competitors for network access, providing inferior networks, and overcharging Competitors. Based on the parallel conduct (of mistreating Competitors and not competing against other Incumbents), plaintiffs alleged a conspiracy "on information and belief."

The district court held that the plaintiff must do more than allege parallel conduct and assert such conduct was evidence of conspiracy. *Twombly v. Bell Atl. Corp.,* 313 F. Supp. 2d 174, 179 (S.D.N.Y. 2003). The plaintiff must also allege facts which would be sufficient, if proven, to establish at least some of the "plus factors" (which will be necessary to overcome a motion for summary judgment). Plus factors are factual elements, beyond a bare allegation of conspiracy, which tend to exclude unilateral or legal conduct. The plaintiff must allege facts which tend to exclude legitimate business explanations for the defendants' parallel conduct. If the conduct alleged does not tend to exclude explanation by ordinary independent self-interested conduct, then the complaint must fail.

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In this instance, the district court found that the conduct of the Incumbents could be explained by independent decisions governed by self-interest. *See Id.* at 183.

The Second Circuit reversed, holding that plaintiffs were only required to plead facts consistent with conspiracy. In other words, so long as the plaintiffs pleaded facts which included an inference of conspiracy as "among the realm of 'plausible' possibilities," the complaint should withstand a motion to dismiss. *Twombly v. Bell Atl. Corp.,* 425 F3d 99, 114 (2d Cir. 2005). Because there was "some set of facts" which could be proven by the plaintiff (consistent with the complaint) which would demonstrate that the parallelism was the product of collusion, the complaint alleged all that was necessary.

The Supreme Court's Opinion: Antitrust Conspiracy

In a 7-to-2 decision opinion by Justice Souter, the Supreme Court reversed the Second Circuit, holding that to state a claim for conspiracy "requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made." *Twombly,* 127 S. Ct. at 1965. Specifically, an allegation of parallel conduct "without some further factual enhancement . . . stops short of the line between possibility and plausibility." *Id.* at 1966. "Hence, when allegations of parallel conduct are set out in order to make a Section 1 claim, they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action." *Id*. at 1965. In reviewing the complaint before it, the Court found nothing that provided a "plausible suggestion of conspiracy" where defendants each, *Id.* at 1971, had strong economic incentives to resist competition from new entrants and where a "natural explanation for the noncompetition alleged is that the former Government-sanctioned monopolists were sitting tight, expecting their neighbors to do the same thing." *Id.* at 1972. In the Court's view, "asking for plausible grounds to infer an agreement" does not require fact allegations making recovery probable, but does require "enough fact to raise a reasonable expectation that discovery will reveal evidence of an illegal agreement." *Id.* at 1965.

Justice Souter noted that the plaintiffs had offered something more than a bare allegation of "parallel conduct therefore conspiracy." The complaint also includes an allegation that the CEO of Qwest, one of the defendant Incumbents, had stated that competing in the territory of other Incumbents "might be a good way to turn a quick dollar but doesn't make it right." *Id.* at 1972 n.13. But Justice Souter also noted that the entire statement by the CEO put things in a different light, and that the district court properly attended to the entire statement. *See*

Id. In context, this is one part of an extended discussion of the allegations of the complaint aimed at determining whether the allegations, alone or jointly, provide factual allegations which, if proven, would tend to exclude a legitimate explanation for the parallel conduct. The detail of the examination, in addition to its very presence, suggests that district courts too must now examine the factual allegations of an antitrust conspiracy with some care. The possibility of a conspiracy will not do, nor will the bare possibility of an economically plausible story later developing prevent dismissal.

The Supreme Court Opinion: Wider Implications

In revisiting the pleading standard, the *Twombly* Court disapproved of its earlier standard in *Conley v. Gibson,* 355 U.S. 41 (1957), which permitted dismissal only when it appears beyond doubt that the plaintiff can prove no set of facts entitling it to relief. The Supreme Court now characterizes the "no set of facts" test as "best forgotten as an incomplete, negative gloss on an accepted pleading standard." 127 S. Ct. at 1969. Indeed, Justice Souter spends a large portion of his opinion in discussion of *Conley* and whether *Twombly* marks a significant shift in the jurisprudence of pleading. Justice Souter thinks not. Some commentators see things otherwise, and believe that *Twombly* marks a dramatic change in standards for pleading. For example, Alston + Bird advises its clients that "the new pleading standard applies to all civil litigation." Akin Gump Strauss Hauer & Feld draws conclusions almost as sweeping, advising that *Twombly* holds "substantial implications for pleadings and motion practice in federal district courts." Interpretations of the sort advanced by Alston + Bird will be challenged by plaintiffs and their counsel. But one does not need a plaintiffs' practice to see difficulties for efforts to read *Twombly* as changing the pleading standards outside of the antitrust context. Only a week after *Twombly* was handed down, the Supreme Court, in a *per curiam* decision, held that Rule 8's "short and plain statement" did not require allegation of specific facts. *Erickson v. Pardus,* 127 S. Ct. 2197, (2007). A claim need not state specific facts, but will withstand a Rule 12 motion if it gives the defendant fair notice about what the claim is and the grounds on which it rests. The issue in *Pardus* was whether a prisoner had stated a claim when he alleged that a liver condition resulting from hepatitis C required a treatment program commenced by prison officials and that the program had been wrongfully terminated with life-threatening consequences. The District Court dismissed the complaint, finding the allegations conclusory. The Tenth Circuit affirmed. The Supreme Court thought the allegations sufficient, and cited *Twombly* in support of the conclusion. *See Id.* at 2200.

What this suggests is that *Twombly* does not mark a sea-change in pleading standards for civil litigation generally. At least for the foreseeable future, its effects are likely to be confined to antitrust litigation. That result makes some sense – Justice Souter's concern with the tremendous costs of antitrust litigation and the difficulties district courts have in controlling antitrust litigation is the point of engagement with the dissent in *Twombly*. It may be then that *Twombly* will aid defendants in antitrust cases, but also provide an incentive for district courts to become more engaged in managing discovery in large cases.

How these issues turn out will not be known for several years as the lower courts proceed to apply *Twombly*. Nevertheless, it is important to attend to the care expended by the Court in tying its decision in this case with a line of cases all of which fall well short of imposing a high pleading standard.

The discussion of discovery burdens played a significant role in Justice Souter's opinion. As anyone involved in private antitrust litigation knows, discovery in such cases is usually quite expensive, very burdensome, and terribly distracting for management. Antitrust discovery is often vastly broader, deeper, and correspondingly more expensive than in other types of cases. Discovery costs in antitrust cases run into the millions of dollars for document collection alone. Those costs are so high that nuisance settlement amounts for antitrust cases run into the millions of dollars, amounts which are often still less than discovery costs.

Antitrust cases are also particularly hard for judges to manage or control. Because the heart of any antitrust case is evidence about relevant markets, antitrust discovery easily turns into production of all business planning, marketing, and pricing documents, followed by depositions of the entire management of a company. The burdens are immense. That this was a concern for the Supreme Court may make it more likely that district courts will become receptive to exercising control over discovery.

Predictions

Twombly can be seen as a victory for antitrust defendants, imposing a heavier burden on plaintiffs to allege facts sufficient to state a plausible antitrust conspiracy. There will be, and already are, a flurry of motions requesting district courts to give closer scrutiny to Section 1 complaints. There will be more dismissals of complaints which would otherwise survive to discovery, at least in the short term. The toughened pleading standard is also likely to mean that a higher portion of conspiracy claims which survive Rule 12 challenges will also surmount summary judgment and head to trial.

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Implementing Flat Fees in Your Practice

by R. Steven Chambers

The *Wall Street Journal* recently published an article about a growing trend among large law firms: flat fees in place of traditional hourly billing. Flat or fixed fee billing and other alternative billing practices are attractive to clients who are continually looking both for reductions in legal fees and for more certainty in the amount of fees they will have to pay.

Most firms do some work, such as uncontested divorces or foreclosures, for flat fees, but lingering in the back of every law firm manager's mind is the nagging possibility that what started out as a routine matter will suddenly become contested. When that happens and the fee arrangement is for a flat fee, there is usually only one of two unhappy outcomes. Either the law firm absorbs the loss in the interest of keeping the client, or the firm must go to the client and ask to change the fee agreement, usually with the result that the client, while it may acquiesce, feels gouged. To avoid this, many firms avoid the flat fee altogether, preferring to bill on an hourly basis.

However, from the client's perspective, the billable hour is the work of the devil. No matter how detailed a billing statement may be (or perhaps precisely because a billing statement is detailed) the client always wonders if it is getting its money's worth. And with good reason. The billable hour equates the value of something with the cost to produce it. While it is necessary for a law firm to cover its overhead and that overhead is a component of the billable hour, one cannot equate the value of legal services with the cost of those services in the same way one can equate the value of a house with the cost of materials and labor to build it. Yet law firms continue to price their services as if this were true.

If you doubt that flat fees are gaining popularity outside of simple matters such as real estate foreclosures, consider this: Cisco Systems now farms out about 75 percent of its annual legal budget, estimated at $125 million, under fixed-fee arrangements, including most of its litigation. A small boutique firm in Chicago won a bid for all of Houston-based FMC Technologies' mass tort work based on a fixed-fee proposal. Now is a good time to begin implementing flat fee arrangements in your legal practice.

The problem with the flat fee is, and always will be, the uncertainty inherent in the legal profession. With few exceptions, the practice of law involves two or more parties, often with adverse, or potentially adverse, interests. While the majority of a certain type of legal matter may be uncontested and routine, any single case has the potential to become contested. A flat fee based on the time it takes to handle an uncontested divorce, for example, is certainly unfair to the lawyer in the case of a contested matter. Likewise, no client is willing to pay a flat fee based on a contested divorce if the matter is uncontested. So how can you arrive at a flat fee that is fair under all circumstances?

The answer lies in your time management records and a statistical process known as simulation. With the advent of time management software and sophisticated mathematical programs such as Excel, any law firm can simulate as many scenarios and outcomes of a matter as it wants, and from those replications arrive at a fee that, over time, will yield a desired outcome regardless of whether the matter is contested or not. Simulation has been used by airlines to design call centers; by banks to determine when to add another teller or open another branch; and by supermarkets to determine how many checkers to schedule. Now you can use it to set a flat fee in your practice. Here's how it works.

Assume you do a lot of work for an auto finance company whose customers file bankruptcy. As a result, you frequently file motions for relief from the automatic stay. The majority of these motions are resolved through stipulations, but a small number require hearings. Through your time management records, you determine that the average uncontested motion is resolved with 2.5 hours of paralegal time in negotiating and drafting a stipulation, and 1 hour of attorney's time to review the documents and stipulation. The attorney's time is billed at $225 per hour and the paralegal's time is billed at $85 per hour, for an average fee of $437.50. On the other hand, an average contested motion requires 7.5 hours of attorney's time and 10 hours of paralegal time, resulting in an

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average fee of $2,537.50. Looking back at the last year's worth of matters, you find you filed 25 motions for relief, 23 were resolved by stipulation, while two required hearings. From this data, you can arrive at a flat fee that will compensate you for the contested as well as uncontested matters.

To do this, you need to create a simulation based on your experience and run that simulation many times to determine your average fee regardless of the type of case, contested or uncontested. This can be accomplished easily with Excel or any other spreadsheet software. Figure 1 shows a simulation spreadsheet.

In cells C3 and C4, enter the attorney's and paralegal's respective hourly rates. In the box entitled Uncontested Motion Cost Data, cells B7 and B8, enter the average time expended by the attorney and paralegal for uncontested motions. In cells C7 and C8, enter

Figure 1

Microsoft Excel - Flat Fee Exhibit.xls

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	A	B	C	D	E	F	G	H	I
1	**Flat Fee Simulation**								
2									
3	Attorney Hourly Rate		$225.00						
4	Paralegal Hourly Rate		$85.00						
5									
6	**Uncontested Motion Cost Data**	**Time**	**Fees**			**Demand Distribution**			
7	Average Attorney Time	1	$225.00						
8	Average Paralegal Time	2.5	$212.50			Type	Probability	Cum. Prob.	Target Fee
9	Total Average Hourly Fee		$437.50			Uncontested	0.92	0.92	$437.50
10						Contested	0.08	1	$2,537.50
11	**Contested Motion Cost Data**	**Time**	**Fees**						
12	Average Attorney Time	7.5	$1,687.50						
13	Average Paralegal Time	10	$850.00			Average Fee	$626.50		
14	Total Average Hourly Fee		$2,537.50			Std. Dev.	$604.01		
15									
16	**Simulation**			**Fee**		**95% Confidence Interval for Average Fee**			
17	**Replication Number**	1	0.624199	$437.50		Lower limit	$508.12		
18		2	0.466224	$437.50		Upper Limit	$744.88		
19		3	0.997493	$2,537.50					
20		4	0.59241	$437.50					
21		5	0.269942	$437.50					
22		6	0.30784	$437.50					
23		7	0.508088	$437.50					
24		8	0.146846	$437.50					
25		9	0.389103	$437.50					
26		10	0.595084	$437.50					
27		11	0.532864	$437.50					
28		12	0.466223	$437.50					
29		13	0.982966	$2,537.50					
30		14	0.91799	$437.50					
31		15	0.794157	$437.50					
32		16	0.629209	$437.50					
33		17	0.671278	$437.50					
34		18	0.83439	$437.50					
35		19	0.755899	$437.50					
36		20	0.89593	$437.50					
37		21	0.139136	$437.50					
38		22	0.662364	$437.50					
39		23	0.286987	$437.50					
40		24	0.715397	$437.50					
41		25	0.124507	$437.50					

Sheet1 Sheet2 Sheet3

Ready NUM

the formula to calculate the total attorney's fee and paralegal's fee: = B7*C3 for the attorney's fee and = B8*C4 for the paralegal's fee. Finally, in cell C9, enter the sum of C7 and C8, that is, = C7+C8, to arrive at your average fee. In the box entitled Contested Motion Cost Data, enter the same information for contested motions, that is, C12 = C3*B12; Cell C13 = C4*B13; and C14 = C12+C13. If you enter the formula as shown instead of the number itself, all you need to do is change cells C3 and C4 to see how varying your hourly rates will affect your outcome.

The next step is to create a demand distribution based on what your records show as to how many motions are contested and how many are uncontested. In cell G9, enter .92, representing the percentage of uncontested motions (23 of 25). In cell G10, enter .08, representing the percentage of contested motions (2 of 25). Cells I9 and I10 equal cells C9 and C14, respectively, representing the average fee for each type of motion, uncontested or contested. The column entitled "Cumulative Probability" is the total of the different outcomes' individual probabilities. It must always total 1 to ensure that you have accounted for all possible outcomes. In this case, there are only two outcomes. A motion is either contested or uncontested. However, there could easily be three or more outcomes, for example, if you handle insurance claims and some matters were resolved by stipulation, some went to arbitration and still others went to trial. In those cases, your demand distribution would have three probabilities, based on the three possible outcomes and your records of how many cases ended up being resolved by which method. Likewise, you would have three average fees corresponding to the three types of outcomes.

Now that you have your cost and average fee data, and your demand distribution, you are ready to simulate as many motions for relief as you want. You do this by generating a series of random numbers in cells C17 through C116 (not all 100 rows are visible in Figure 1). You do this by entering the formula =RAND() in cell C17 and copying that formula through cell C116. This tells Excel to generate 100 random numbers, one in each cell. Each of those random numbers represents one motion for relief. In column D you will have Excel calculate the fee for each of those motions based on your data, which shows that 92% (23 of 25) of the motions are uncontested and 8% (2 of 25) are contested. This is accomplished by an "IF-THEN" command in cells D17 through D116. In cell D17, enter the formula =IF(C17<=G9,I9,I10). This tells Excel to look at cell C17 and compare it to cell G9. If the random number in C17 is less than or equal to .92 (G9), Excel is to enter the uncontested average fee, $437.50 (I9). If the random number in C17 is greater than .92, Excel is to enter the contested average fee, $2,537.50 (I10). Copy this formula in cells D18 through D116. If you try to duplicate this spreadsheet, you will not get the same values in cells C17 through C116 and D17 through D116 because the random numbers generated by Excel will not be the same. In fact, your random numbers will change every time you hit F9, because that command tells Excel to generate a new random number wherever the formula =RAND() appears. However, that does not change the validity of the results.

You have now simulated 100 motions for relief based on your historical cost data, the equivalent of four years' worth of work. In cell G13, calculate your average fee by entering =AVERAGE(D17:D116). That is your average fee for 100 motions for relief, assuming 92% are uncontested and 8% are contested, and based on your hourly rates and time records.

If you hit F9 repeatedly, you will see that the average fee varies within a low to high range. Where within that range do you set your fee? You can get some help with this by calculating a 95% confidence interval. This is a range within which 95% of your fees will fall. There will always be outliers, but by calculating a confidence interval, you can be assured that 95% of the time your fee, on an hourly basis, would fall within that range.

To calculate a confidence interval it is necessary to have both the average and the standard deviation of your sample. In cell G14, enter the standard deviation of your 100 replications, by using the formula =STDEV(D17:D116). In cells G17 and G18, you will calculate the lower and upper limits of a 95% confidence interval using the formula =G13-NORMSINV(0.975)*G14/10 for G17, and =G13+NORMSINV(0.975)*G14/10 for G18. This is a fairly sophisticated statistical calculation that takes a normal, bell-shaped curve and cuts off the lower and upper 2.5%, leaving 95% of the population enclosed by the curve. What this means to you is that 95% of your matters will generate a fee between those upper and lower limits. **NOTE:** The formula above requires that you divide by the square root of the number in your sample. In this case, we ran 100 simulations. The square root of 100 is 10, so the formula has 10 in the denominator. If you only run 60 simulations, for example, you must divide by the square root of 60 to calculate the confidence interval.

Based on this particular simulation, 95% of your cases will generate a fee between $508.12 and $744.88. If you were to set a flat fee somewhere in this range, you can be assured that the fee

is fair in terms of yielding compensation based on the average time and billing rate of your firm for this matter. Exactly where in that range you set the fee is up to you and may depend on a number of factors wholly unrelated to your desired hourly rate, the number of hours required to perform the work or the cost of your paralegal. You may set it low if you are trying to win a new client. You may set it higher if the client only has a few matters to send to you. You might couple a lower flat fee with a bonus for quick resolution or other performance-based incentive.

A couple of caveats apply. First, the rule "garbage in, garbage out" holds true. If your time management records are inadequate to reflect the true time spent on a matter, or if your hourly rates are not properly set to your firm's needs, or if any of the parameters are faulty, the result of the simulation will be meaningless. Second, you should always maintain time records and review your flat fees at least annually. If any of the parameters change, such as a higher percentage of matters becoming contested, re-run the simulation and perhaps adjust your fees accordingly.

This method works for any type of case so long as you have a "sufficiently large" sample. By sufficiently large, statisticians generally mean something in excess of 25. If you do a relatively large number of one type of matter, you have probably noticed that they all follow a similar pattern in terms of what has to be done, whether it is a criminal case, a personal injury defense, a divorce, or a securities filing. The key is having done enough that you have adequate records on which to base the simulation.

The flat fee can be an excellent selling point to a client. Many clients hesitate to send work because they are afraid the cost of resolution will outweigh the benefit to them if legal fees escalate in a contested matter. By quoting a flat fee, you are assuming that risk. However, by going through the above exercise, you have all but eliminated that risk to your firm over time. When the inevitable contested matter arises, you can still sleep well at night knowing that all those other uncontested matters are money in the bank against which you can draw and never be overdrawn.

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WiFi in Utah: Legal and Social Issues

by Cheryl B. Preston

All over Utah, parents are buying their children the tools necessary to access astonishingly degrading and violent sexually explicit materials. For instance, innocent looking gaming systems, *i.e.,* PlayStation Portable, X-Box 360, and Nintendo Wii, can access the internet and are available everywhere from around $130 to $500. Many minors also have internet enabled cell phones, PDAs, and Blackberrys. Most of these systems do not come with a content filter and cannot be modified by software to add any protections.

These tools, as well as laptop computers, can pick up wireless internet signals in "hot spots" all over Utah, including in Salt Lake City alone, Liberty Park, Main Street, the library, and numerous cafes and restaurants.[1] And, as more devices become available with internet access capacity, more locations in Utah and around the country are boasting of "free wireless access" provided by governments, mall owners, and internet service providers who enjoy the advertising and hope to lure free users to faster, paid programs. In Utah, hundreds of businesses from Logan to St. George (and everywhere in between) provide free wireless internet access,[2] and proposals are in the works for more, including city-wide access. In addition, hundreds of homes in Utah are set up with wireless routers. These electromagnetic signals cannot be stopped at property lines, and when not secured with a password or otherwise, they can be used by anyone on the street or neighboring property.

Law enforcement agencies are trying to draw attention to the risks of identity theft, invasion of privacy, and other computer crimes perpetuated through the use of someone else's unsecured wireless network.[3] An often overlooked, and more serious long term concern, is the risk of WiFi hotspots is to the wellbeing of our youth.

Anyone familiar with the internet now knows that it has become a marketing miracle for commercial pornographers and a haven for sexual predators. The harm caused by internet pornography is extensive and devastating. The FBI claims that "[p]ornography is often used in the sexual victimization of children."[4] Pornography is an effective tool for seduction because it "is used to lower the natural, innate resistance of children to performing sexual acts, thus functioning as a primer for child sexual abuse."[5] One recent study suggested a direct link between the use of pornography and actual acts of sexual abuse against children.[6] It showed that as many as 85% of those convicted for trafficking in child pornography admitted also to inappropriately touching or raping children.[7]

The Harm that Comes from Unsecured Wireless Connections

While the abilities to instant message and access information on the internet are truly spectacular advancements with vast educational, business, and inter-personal benefits, the world wide web comes with real costs. In addition to the illegal material, such as obscenity and pornography made using child victims, millions of other websites are inappropriate for minors even if currently legal.[8] A court considering the constitutionality of the federal Child Online Protection Act recently estimated, "A little more than 1 percent of all Web pages on the Surface Web (amounting to approximately 275 million to 700 million Web pages) are sexually explicit."[9]

Parents and educators are becoming increasingly aware of online pornography and are fighting back by installing filters on home and school computers, establishing computer use rules, and monitoring home computer use. Nevertheless, few are aware of the extent to which the internet can be freely accessed in other places and by other means, such as through the neighbor's wireless network or at a shop. Away from parental controls and without the filters or other restrictions on their home and school computers, minors can easily browse lurid obscenity that more than answers their curiosity, be trapped in pornographic sites they didn't intend to access, receive less-than-wholesome pictures from friends and casual acquaintances (including those they met on MySpace and FaceBook), and, with the help of a digital or phone camera, send pictures parents might not even imagine them capable of taking.

Moreover, free wireless internet access can actually assist those who peddle child pornography, obscenity, and other sexually explicit material. Service providers of free wireless hot spots are not required to verify or retain information, even if they require a log in name; anyone using the wireless signal can view and trade illicit materials without being traced. These free wireless hot spots provide "unparalleled anonymity for traders of child pornography."[10]

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Socially Responsible Wireless Networks

Enabling ordinary protections on a wireless network is simple and can be done by anyone who sets up such a system, including individual users in homes. When a user sets up a wireless router, the instructions typically ask the user if he or she wishes to secure the network by password. Thus, during the setup procedure for most routers, the user can enable a password; then only those who are given the password can log on to the internet service. In contrast to filters, which require continual updates, the one-time password protecting of wireless internet networks is easy and free.

Securing wireless networks is smart for other reasons. An unsecured wireless network is a virtual invitation to outsiders to intercept personal information, credit card numbers, passwords and other communications sent over the web. In addition, because online crimes, copyright infringement, obscenity, child pornography, fraud, and other illegal use of computers can be traced to particular computers and networks, a wireless owner should be most reluctant to have an unsecured network to which others can gain access and use for illegal and inappropriate purposes.

A second choice for those deploying a wireless internet connection is to install a filter that is reasonably effective in restricting the availability of sexually explicit content through the connection. Although filters are not 100% effective, parents should be able to assume that wireless networks are either secured or protected by filters designed to protect minors.

Regulating Wireless Connections

We would like to believe that Utahns will soon become sufficiently aware of the risks and sufficiently socially responsible to secure or filter all wireless networks; but that may not be true. The question then arises about how to require those who choose to use wireless networks to take the precautions necessary to protect children.

Existing Internet Pornography Laws

Currently, there are no enforceable federal laws punishing the online posting or viewing of sexually explicit material (outside of a public library that accepts federal funds)[11] unless the material qualifies under the very limited and strict Supreme Court definition of "obscenity"[12] or is pornography created using actual children.[13] And, even so, obscenity and child porn is easily accessible on the web since enforcement efforts have not even begun to deter the vast onslaught of such material.

Utah has statutes criminalizing the distribution of pornography, *see* Utah Code Ann. § 76-10-1204 (Supp. 2007), "dealing in materials harmful to minors," *Id.* § 76-10-1206 (Supp. 2007), and posting pornography on the internet if the content provider is domiciled in Utah, *see id.* § 76-10-1233 (Supp. 2007). None of these statutes, however, regulate the millions of pornographic websites that are posted by content providers outside of Utah and, thus, have done little to stop the inundation of sexually explicit material on the web.

One might argue that making an unsecured wireless network available in Utah, especially to minors, is a form of "distributing" pornography. Although most network owners lack the requisite "intent" under the Utah statutes, someone who intentionally provides to another person, especially a minor, access to pornography on the internet would presumably fall within the statutory language. These sections explicitly exempt "internet service providers," but that term is defined to include only those who provide internet access as a business with the intent to make a profit. *Id.* § 76-10-1230 (5)(a) (Supp. 2007).

One provision of Utah law that might prove very helpful in addressing the WiFi problem is Utah Code Section 76-10-1231 (Supp. 2007). It requires an internet service provider to "filter content to prevent the transmission of material harmful to minors to the consumer," *Id.* § 76-10-1231(1)(a). The provider must give a conspicuous notice that a consumer of the service may request a content block, *see id.* § 76-10-1231(2). To satisfy the statute, a service provider must, upon request, provide a "commercially reasonable" in-network filter or provide, as a billable service, a filter the consumer can install on the consumer's computer. *Id.* § 76-10-1231(1)(b), (3)(a). As many wireless devices, such as PDAs cannot accept filtering software, the only reasonable solution will be an in-network filter. Thus, when a wireless network is provided by a commercial provider, a consumer in Utah may insist on the protection of a reasonable filter designed to block material "harmful to minors," defined broadly by Utah law. *See id.* § 76-10-1201(5) (Supp. 2007). An internet service provider that offers a "free" service for the purpose of advertising its business and, hopefully, convincing its "free" users to move to a higher quality, paid service, is a commercial internet service provider. If a commercial internet service provider fails, following notice, to comply with the law by providing an in-network filter or a filter service, it is subject to a fine up to $10,000 per day and may be guilty of a misdemeanor, *see id.* § 76-10-1231(5). Notwithstanding its apparent applicability, this statute has not yet been widely used in the WiFi context.

Existing Nuisance Law

When a wireless signal, with its potential for harm, invades the private property of another without that property owner's consent, a strong parallel can be drawn to existing nuisance law. The Restatement (Second) of Torts defines a private nuisance as "a nontrespassory invasion of another's interest in the private use and

enjoyment of land." RESTATEMENT (SECOND) OF TORTS § 821D (1979).

Statute and case law have established that nuisance offenses are actionable by cities, states, and private parties. Common nuisances include "polluting smokestacks, corroded tanks leaking hazardous wastes into the groundwater, barking dogs, noisy trains, and smelly hog farms."[14] Nuisance claims succeed against all kinds of annoyances emanating from neighboring property, such as vibrations, fireworks displays, noise from drinking parties and barking dogs, ground water seepage, firing guns, and urinating so others can see.[15] Utah cases have awarded damages for such nuisances as the "noise emanating from [a theater] as well as the conduct of [its] patrons," *Johnson v. Mt. Ogden Enterprises, Inc.,* 460 P.2d 333, 336 (Utah 1969), and a café "where patrons created loud and disturbing noises [and] used vulgar and obscene language audible to nearby residents." *Wade v. Fuller,* 365 P.2d 802, 802 (Utah 1961).

Salt Lake City, Utah prohibits by code a range of nuisances, including diseased trees and shrubs, *see* SALT LAKE CITY, UT, CODE § 2.26.230 (1988); "[o]ffensive [c]onduct," *id.* § 5.54.150(A) (1999), nudity, houses for prostitution and "lewdness," *id.* § 11.16.070 (1986); vicious and foul smelling animals, *see id.* § 8.04.370(B) (2) – (3) (1999), animals that "bark[], whine[] or howl[]," *id.* § 8.04.370(B)(6), and "noxious" substances, *id.* § 17.36.080(B)(5) (1986). In Salt Lake City a "public nuisance" is an act or omission that "annoys" others, *id.* § 11.32.010(A)(1) (1986), or "[o]ffends public decency," *id.* (A)(2). And, furthermore, "[a]n act which affects another person or persons in any of the ways specified in this section is still a nuisance regardless of whether or not the extent of annoyance or damage inflicted on individuals is unequal." *Id.* § 11.32.010(B).

St. George, Utah prohibits, *inter alia,* any "loud, unnecessary or unusual noise, or any noise which annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others," ST. GEORGE, UT, CODE § 4-2-3(H) (1981), intrusive floodlights and lighted signs, *id.* § 9-13-7(I)(2005), and refuse in public street, *id.* § 4-2-3(B) (2003), as well the use of "threatening, abusive, insulting or indecent language;… commit[ing] any obscene or indecent act;…fight[ing]; or… create[ing] a public disturbance or nuisance in any park," *id* § 7-3-1(F)(2003). Although this ordinance covers speech, "such ordinances, if drafted narrowly and clearly, are valid exercises of the municipality's power to protect the decency, morality, peace, comfort, and good order of the community." 6A MCQUILLIN MUNICIPAL CORPORATIONS § 24:113 (3rd ed. 2007). If the ordinance covered the use of obscenities unrelated to preservation of the peace, as required by the delegation of power from the state of Utah to municipalities, the ordinance would be invalid. *See Salt Lake City v. Davison,* 493 P.2d 301, 302 (1972) (finding that "the Legislature intended to limit the power of the city in enacting ordinances regarding obscene or profane language to situations where there is a breach of the peace").

Statute or Ordinance

While the common law and general ordinances in various Utah cities provide for a cause of action against a nuisance, a greater clarity could be achieved if the state of Utah, or individual cities, enacts a statute or ordinances, specifically regulating unprotected wireless access that reaches off the private property of the network's owner. If a municipality enacts an ordinance prohibiting any

nuisance relating to health, safety and public welfare, including protection against *moral offenses,* and the subject matter of the ordinance has not been preempted by state statute, the municipality has properly exercised its police power. *See, e.g., Dairy Prod. Servs., Inc. v. City of Wellsville,* 2000 UT 81, ¶ 12, 13 P.3d 581.

Allowing one's wireless to invade the neighbor's property without a filter or password is not First Amendment speech. Governments may prohibit any nonverbal activity if its primary purpose is not "expression" of an idea. For instance, "the elements of nonverbal expression inherent in nude sunbathing are not sufficiently distinct to warrant constitutional protection." McQuillin, *supra*, at § 24:112. Enabling a network used by its owner primarily for internet access, or to gain publicity for a commercial internet service, is not primarily "expression."

The state may not enact a statute to prevent an act that is believed will become a nuisance prior to its occurrence. *See id.* § 23:63. Thus, the state cannot enjoin my neighbor from installing wireless because it "knows" him or her to be unlikely to make it secure. In contrast, the nuisance occurs when the access signal is projected outside of its owner's property and onto public property or the property of an adjacent landowner. It is an existing, not merely an anticipated, nuisance. The neighboring landowners, from that time forward, must take precautions to ensure that the unwanted wireless signal is not used to access pornography on their property. The nuisance is the projection of this problem, just as spilling infectious refuse onto the neighbor's property is a nuisance properly subject to the law, even if the neighbor successfully keeps his or her children from touching the refuse.

Unsecured wireless internet access intruding uninvited on private or public property certainly creates harms as offensive as those addressed by the nuisance laws and local ordinances addressed above. These include the risks of a minor's exposure to pornography and the legitimate offense adults may feel with the risk that those on their property may freely view obscene and other adult materials. Some may argue that the risk of exposure of children to pornography is not a sufficient harm for the state to act, or that a property owner's interest in not permitting adults to access pornography on their property is an insufficient property interest. However, the law in the United States has clearly affirmed these interests as "compelling" interests of the state, warranting regulation even if other rights are affected.

The State's Interest in Protecting Minors

The state's right to act to limit children's access to internet pornography is rooted in two constitutionally recognized principles: 1) the state's separate, legitimate interest in protecting minors, and 2) the state's obligation to protect parents' right to control the method and content of their children's education.

The State's Duty to Minors

Our law "conclusively presume[s] that infants do not have the mental capacity and discretion to protect themselves from the artful designs of adults."[16] Thus, many kinds of legislation have been enacted to protect minors from the dangers of the adult world, and even from themselves. In Utah, we protect minors from those who would "sell, offer to sell, or otherwise furnish any alcoholic beverage or product" Utah Code Ann. § 32A-12-203 (2005), or permit alcohol consumption by minors, *see id.* § 32A-12-217 (2005), employ certain minors during school hours or in hazardous work, *see id.* §§ 34-23-302 (2005) *et seq.*, provide tobacco products to minors, *see id.* § 76-10-104 (2003), or permit minors to use tobacco in a place of business, *see id.* § 76-10-103 (2003), provide handguns and certain other weapons to a minor, *see id.* § 76-10-509.5 (2003), body pierce or tattoo a minor, *see id.* § 76-10-2201 (Supp. 2002), or even enter into a contract with a minor, *see id.* § 15-2-2 (2005).[17]

In *Reno v. ACLU,* 521 U.S. 844, 869 (1997) the Supreme Court reaffirmed that "'there is a compelling interest in protecting the physical and psychological well-being of minors' which extend[s] to shielding them from indecent messages that are not obscene by adult standards." *Id.* at 869 (quoting *Sable*

Commc'ns, Inc. v. FCC, 492 U.S. 115, 126 (1989)).

Parental Rights

Parents have the right to secure and control their household. If a neighbor broadcasts an unsecured wireless internet connection, parents have no ability to restrict that signal from entering their home. The Supreme Court has "recognized that [] parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." *Ginsberg v. New York,* 390 U.S. 629, 639 (1968). Utah courts have followed suit, stating: "High among the ideals of individual liberty which we consider essential in our free society are those which protect the sanctity of one's home and family." In re *Castillo,* 632 P.2d 855, 856 (Utah 1981) (citations omitted). Minors can access pornography through unsecured internet connections without the knowledge or approval of their parents. Because the state respects parental authority, it must provide the "support of laws designed to aid discharge of that responsibility." Ginsberg, 390 U.S. at 639. Parents have the right to decide how their children are educated and parents "should be the ones to choose whether to expose their children to certain people or ideas." *Troxel v. Granville,* 530 U.S. 57, 80 (2000) (quoting In re *Custody of Smith v. Stillwell,* 969 P.2d 21, 31 (Wash. 1998)).

Some may argue that if rich parents did not spoil their children with devices capable of accessing wireless networks, those parents would not have to worry about unsecured WiFi hot spots. Certainly, a parent may decide that laptops, wireless enabled cell phones, and other wireless devices are useful tools in promoting education, safety, and legitimate recreation. Moreover, some teens purchase their own wireless enabled devices. The obligation of the state to enact laws that support parental choices applies anyway, as the law recognizes "parental control or guidance cannot always be provided." *Ginsburg*, 390 U.S. at 640.

The responsibility for protecting children rests with parents; however, the government must support parental choice. Yet, today, American parents anguish as their choice for a porn-free home is sabotaged by unsecured wireless networks that carry destructive images into public places and that spill over the neighbor's fence. An unfiltered wireless connection in public spaces or that reaches into another's private property defeats parents' efforts to regulate their children's internet usage. Those who deploy wireless connections should be responsible for taking the simple precautions to protect minors.

Moral Nuisance Torts

The availability of pornography is not just an issue for households with minor children. Many adults object to pornography, and are legitimately horrified by the risk that pornography can be easily

accessed on their private property and on public property that they and their families frequent. The law has long recognized the doctrine of moral nuisances. Brothels, houses of ill fame, bawdy houses, and houses of prostitution appeared in many nineteenth century nuisance cases; the moral concerns underlying these cases are shared by many today and continue to be a basis for nuisance law.[18] "A municipal legislative body is vested with authority to adopt such ordinances as it may deem necessary for the promotion of public morals and the suppression of vice within its corporate limits." McQuillin, *supra*, at § 24:112.

A recent example of a moral nuisance claim is *Mark v. Oregon State Department of Fish & Wildlife,* 974 P.2d 716, 718 (Or. Ct. App. 1999). In this case, a couple purchased property bordering a beach at a wildlife refuge that attracted nude sunbathers. The court held that "[u]ndesired exposure to sexual activity…is one of the traditional grounds for finding either a public or a private nuisance." *Id.* at 719.

Privacy Interests of Property Owners

The Supreme Court has always recognized the general right of a private property owner to exclude unwanted speech. Certainly, if expressive speech can be restricted based on the right of a private property owner to keep it out, the non-expressive "seepage" of wireless access – not itself speech of any kind – can easily be justified as a type of harm subject to state regulation.

"[U]nwilling listeners may be protected when within their own homes." *Frisby v. Schultz,* 487 U.S. 474, 485 (1988). In *Frisby*, the Court emphasized the sanctity of the home as a refuge from unwanted speech. In *Hill v. Colorado,* 716 530 U.S. 703, (2000), the Court reiterated that "[t]he unwilling listener's interest in avoiding unwanted communication has been repeatedly identified," *Id.* at 716 and protected by the Supreme Court. Further, "[t]he right to avoid unwelcome speech has special force in the privacy of the home and its immediate surroundings." *Id.* at 717. Utah has a strong tradition of protecting a property owner's right to exclude unwanted speech. *See, e.g., Utah Gospel Mission v. Salt Lake City Corp.,* 316 F. Supp. 2d 1201, 1224 (D. Utah 2004), aff'd, 425 F.3d 1249, 1258 (10th Cir. 2005).

Recently, the "Do-Not-Call Registry Act," 15 U.S.C. § 1601 (2003), was upheld based on privacy rights. In *Mainstream Marketing Services, Inc. v. FTC,* 358 F.3d 1228 (10th Cir.), *cert. denied,* 543 U.S. 812 (2004), the Tenth Circuit explained that "a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions." *Id.* at 1237-38 (quoting *Frisby,* 487 U.S. at 484). Similarly, with respect to the "Pandering Mail Act," the Supreme Court held the act may impede the flow of valid ideas into a home; but "no one has a right to press even 'good' ideas on an unwilling recipient." *Rowan v. United States Post Office Dep't.,* 397 U.S. 728, 738 (1970). The Court found this act constitutional even though the homeowner may retrieve and destroy any sexual material in the mailbox before it is opened. The risk of exposure is enough. Similarly, the risk of exposure through unwelcome wireless access is enough.

Decency on Public Property

Common sense supports the idea that pornography use should be zoned away from areas frequented by the general public. No community, including Las Vegas, allows the performance of explicit sexual conduct in public places, including streets and parks, nor on government property. A government should not condone the use of pornography, let alone sponsor it, on the property it holds in trust for all of its citizens, including children and recovering pornography addicts. If a government provides or allows unsecured unfiltered wireless internet access on its property, it is doing just that – at least until pornography on the internet is effectively regulated. Considering the Government's constitutionally recognized interests in protecting minors, as discussed above, and in preserving public morality generally, it is ironic that, to date, many governmental entities in Utah allow (and in many instances provide) free, unfiltered internet access.

Many of the same issues arise with hot spots in malls and other non-government public spaces. Minors regularly gather in malls and other public places without the supervision of their parents or guardians. In these places, minors who want to find pornography can freely access it with a wireless connection on which they are entirely untraceable and unaccountable. They show their finds to peers and may even pressure other teens in the area to look at what they have found. Although many minors use laptop computers for this purpose, new developments in technology mean that internet pornography through wireless networks is accessible on other common devices such as wireless-enabled game players, smartphones, Blackberries, PDAs, and so forth.

Another reason why wireless connections in parks and malls need to be secured relates to the harmful secondary effects that may flow from the use of internet pornography in these areas. Courts have upheld the geographical zoning of locations where adult material is accessible. In *Renton v. Playtime Theaters, Inc.,* 475 U.S. 41 (1986), the Supreme Court upheld a city zoning ordinance restricting the location of "adult motion picture theatres" against a First Amendment challenge. A laptop in a public area with unfettered access to internet pornography is an issue of discrete geographical concern, just as is a geographically situated adult bookstore.

The Supreme Court has held that zoning regulations limiting where, geographically, adult material can be hawked are subject only to intermediate constitutional scrutiny under the "time, place and manner" doctrine. *Id* at 46. The secondary effects relied upon in the zoning cases apply with equal force in the wireless access context. An adult business "tends to attract an undesirable quantity and quality of transients, adversely affects property values, causes an increase in crime, especially prostitution, and encourages residents and businesses to move elsewhere." *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 55 (1976). A geographical location adorned with computer screens displaying pornography would likely suffer the same fate.

Other possible side-effects of pornography use in public spaces include the risks of inappropriate sexual behavior among minors, attraction to the area of sexual predators, including pedophiles and rapists, and unwanted exposure of pornography to passing citizens.

> Sexually explicit content and ubiquitous advertising will be more prevalent in networked places. Citizens will carry this content with them into the networked public square. We will all potentially be more 'captive' in networked public places – on buses, in subway cars, in parks and government buildings – to speech that we have generally been able to avoid in material public places.[19]

What woman wants to jog along a path populated by benches of men viewing pornography on their laptops or handheld devices? What parent wants younger children playing in a park where pedophiles go to access internet pornography? Of course, not all internet users in parks and malls access pornography, but the internet porn problem has become so extensive that the Government can be certain that a surprisingly large proportion of internet use involves pornography.

Practicality of WiFi Regulation

The state can address the problem of wireless networks by simply requiring passwords, or other limitations on access, or requiring reasonable content filtering on free networks. Such a regulation does not deny any adult the right to use the internet, set up a wireless network, or access adult material thereon. It simply restricts the manner in which one person's decision to have unfiltered wireless access affects others. Everyone continues to have unfettered access to any internet service that is not wireless and to any wireless network that is password protected, filtered or subject to any other reasonable means of limiting the unapproved access by minors and the use of pornography in public spaces.

Such a regulation would not be preempted by federal law

because it applies only to wireless networks deployed in the geographical confines of Utah and because it does not address any issue currently covered by any federal statute.

Some may argue that such a regulation ignores economically disadvantaged citizens who must rely on free wireless internet. Few, if any, economically disadvantaged citizens will be affected by such a regulation as the price of portable devices (such as the newer PDAs and laptops) that enable connection to wireless networks is more prohibitive than the cost of basic internet access service. In any event, anyone who is economically disadvantaged may still, regardless of this regulation, freely access protected wireless connections – for example, connections at public libraries. Indigents have no recognizable right to access pornography for free. They can continue to use the internet for other purposes on filtered connections.

Access at Airports

The trend to provide wireless internet access at airports is growing. Generally, airports need not worry about this type of regulation because most airports already secure their wireless networks and require credit cards for wireless use.

Nonetheless, the state could decide to make an exception for wireless access in airports without frustrating the overall purposes of WiFi regulation. Airports do not pose as many of the access dangers as other public places. Airports are not regularly used as gathering points for minors. Airports are typically not conveniently located, and airports charge anyone parking in their lots a considerable fee, thereby deterring minors from using airport property for internet use. Moreover, internet signals at airports are notoriously weak and, thus, the ability of an internet user to download pornography, which typically requires huge bandwidth, is correspondingly reduced. Finally, although some people have more than enough time to spare sitting in airports, these people are rarely minors without a parent, coach or other supervisor. Few teens undertake air travel without an adult. As more and more adults protest the use of pornography in public places, however, airports will want to install protections even if minors are not present.

Finally, if an airport chooses to continue to provide free wireless internet access, it can install a filter and still evade liability under such a regulation.

Enforcing Wireless Connection Regulation

Regulation of wireless networks does not require enforcement officials to drive the neighborhood seeking unsecured wireless signals. Having a law against speeding does not require a police officer with a radar gun on every corner, and making daytime lawn watering illegal does not require full-time city sprinkling monitors. Law enforcement may pursue violations that come to their attention, just as they do other violations of law.

Moreover, enforcement is likely to be effectively accomplished without significant involvement of state efforts. As the public becomes aware of the wireless regulation and its goals, most residents will voluntarily comply. Moreover, high-profile public persons, governmental entities, shopping malls, and others will voluntarily comply to avoid negative publicity.

If homeowners notice that the wireless connections available on their computer include an unsecured network, they can call the neighbors and ask them to check their wireless system for password protection. Few neighbors will resist such a request, particularly when made aware that the regulation is enforceable by law. Citizens may form community groups to create public awareness of the regulation and such groups may be called upon to contact neighbors and businesses and request that they secure their wireless connections. In Utah, many local and state-wide groups fighting pornography may be willing to help with encouraging compliance.

If some network owners remain stubbornly resistant, citizens may report the unsecured wireless connections to enforcement officials. Citizens could easily record the necessary evidence by taking a picture of their computer screen containing the date, time, and accessed wireless connection.

Law enforcement officers currently investigate reported zoning violations, barking dogs, loud parties, and fights. Officers may just as easily respond to a complaint by driving by and checking for unsecured wireless connections. In sum, enforcement of a WiFi regulation is no more burdensome than countless other acts and local ordinances.

Conclusion

Parents are striving to protect children (and themselves) from the dangers of pornography by regulating the use of computers at home and at schools, avoiding areas of town with adult stores and theaters, and restricting cable channels. Unfortunately, unsecured, unfiltered wireless internet connections make online content, including pornography, just a mouse click away at a surprising number of locations.

With new technology comes a need to consider the risks and benefits, and ways to optimize safety with measured regulations. A simple requirement that wireless networks be either password protected (or secured in another way) or reasonably filtered is not burdensome, unconstitutional, or impractical to enforce.

1. *See* XMission Wireless, Locations, http://www.xmission.com/wireless/index.html (last

visited July 19, 2007).

2. *See* The Wi-Fi-FreeSpot Directory, http://www.wififreespot.com/ut.html (last visited July 18, 2007).

3. *See, e.g.,* Andrew Adams, *Hidden Dangers of WiFi Hotspots,* KSL Newsradio, July 19, 2007, http://www.ksl.com/?nid=148&sid=1502228.

4. Federal Bureau of Investigation, A Parent's Guide to Internet Safety: Introduction, http://www.fbi.gov/publications/pguide/pguidee.htm (n.d.).

5. Sharon Cooper et al., Medical, Legal & Social Science Aspects of Child Sexual Exploitation: A Comprehensive Review of Pornography, Prostitution, and Internet Crimes 198 (2005) (citing D.H. Schetky & A.H. Green, Child Sexual Abuse: A Handbook for Health Care and Legal Professionals (1998)).

6. *See* Julian Sher & Benedict Carey, *Debate on Child Pornography's Link to Molesting,* N.Y. Times, July 19, 2007, at A20, *available at* 2007 WLNR 13735383.

7. *Id.*

8. Dispute about where to draw the line on what sexual material is harmful to minors may have lost steam. A consensus is forming around a concept of "sexually explicit material." *E.g., ACLU v. Gonzales,* 478 F. Supp.2d 775 (2007) (using the term "sexually explicit" content or material over 60 times to describe online material that would be harmful to minors and relying on numerous reports based on being able to make such a distinction). Various existing federal statutes expressly define what is "sexually explicit." *E.g.,* 42 U.S.C. § 13031(c)(5).

9. *Gonzales*, 478 F. Supp. 2d at 788.

10. Kevin G. Hall, *Wi-Fi Helps Child Porn Exchanges Thrive: The Proliferation of Easy Internet Access has given Traders of Child Pornography the Shelter of Anonymity,* Miami Herald (July 17, 2007), at A1, *available at* 2007 WLNR 13564186.

11. *See* Child Internet Protection Act (CIPA), Pub. L. No. 106-554, 114 Stat. 2763, 2763A-335 (2000) (codified as amended at 20 U.S.C. § 9134(f), 47 U.S.C. § 254(h)(6) (2002) (upheld in *United States v. American Library Ass'n,* 539 U.S. 194 (2003)).

12. *See Miller v. California,* 413 U.S. 15, 24 (U.S. 1973).

13. *See* 18 U.S.C. § 2256(8) (defining "child pornography").

14. John Copeland Nagle, *Moral Nuisances,* 50 Emory L.J. 265, 265 (2001). *See also Branch v. Western Petroleum,* 657 P.2d 267 (Utah 1982) (waste water); *Vincent v. Salt Lake County,* 583 P.2d 105 (Utah 1978) (drainage).

15. *See, e.g., Rushing v. Kansas City So. Ry.,* 185 F.3d 496 (5th Cir. 1999) (holding that federal law did not preempt a nuisance claim against the noises and vibrations caused by a nearby railroad); *People v. McDonald,* 137 Cal. App. 4th 521, 539 (Ca. Ct. App. 2006) (urinating so others can see); *Esposito v. New Britain Baseball Club, Inc.,* 895 A.2d 291 (Conn. Super. Ct. 2005) (fireworks display at a baseball stadium); *Walker v. Laningham,* 148 P.3d 391, 395 (Colo. Ct. App. 2006) (holding that a neighbor's barking dogs constituted a nuisance); *Biglane v. Under The Hill Corp.,* 949 So.2d 9 (Miss. 2007) (noise from a saloon); *Shaw v. Coleman,* 645 S.E.2d 252, 259–60 (S.C. Ct. App. 2007) (firing of guns and air cannon); *Reed v. Cloninger,* 131 P.3d 359 (Wyo. 2006) (flooding of basement from irrigation water).

16. *New York v. Stringfellow's of New York, Ltd.,* 684 N.Y.S.2d 544, 551 (N.Y. App. Div.1999). In this case, an adult establishment attempted to skirt the city's zoning ordinances by allowing minors to enter if they signed a waiver releasing the establishment from any liability for any damage caused to them.

17. Contracts are not valid when made with minors so as "to protect infants against their own mistakes or improvidence and from the designs of others." 43 C.J.S. *Infants* § 210 (2007) (describing purposes of the infancy doctrine).

18. *See generally* Nagle, *supra*, note 14.

19. Timothy Zick, Clouds, *Cameras, and Computers: The First Amendment and Networked Public Places,* 59 Fla. L. Rev. 1, 4 (2007).

Many thanks to our peers for selecting the following VanCott lawyers for inclusion in *Mountain States Super Lawyers – 2007*

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Later in Life Lawyers: Tips for the Non-Traditional Law Student

by Charles Cooper

Reviewed by Catherine E. Roberts

Having lived this book, I wish had read it before I went to law school at age 41. Linked to a website known as www.nontradlaw.com, it is filled with useful information about who chooses to go to law school, why they do it, how they get in, and how to succeed once admitted. It recommends study techniques and contains comments from many people in different situations – from the older, married students with past careers, to the ones who are "non-traditional" because they took a few years off between college and law school but are still in their early twenties. The book takes advantage of recent commentary from current law students, quoting directly from lengthy emails.

A large fraction of law students these days are non-traditional. In fact, the "traditional" student may have been the exception, and not the rule, at the University of Utah when I was there. From those who came to Utah to ski and enrolled in law school (partly because of lower tuition), to our "Older But Wiser" social group (those, like me, who were in their thirties or forties with lots of life experience behind them), the U of U Class of 1994 had it all. Many of us with children and other obligations regarded law school as a nine-to-five job.

The book *1-L* by Scott Turow was a popular must-read for law students back then, but it had little application to my law school experience at the U. No professor intimidated me as much as Professor Kingsley did the Harvard students. I was older than most of the professors, for one thing. On the contrary, they were positive and encouraging. And no young classmate ever tried to make me feel foolish. We all found the material challenging, whether we could spend the night in the library preparing for a final or had to cut class to retrieve a sick child from preschool.

Cooper takes a strong position on the people who change careers to go to law school not intending to become lawyers: don't do it. Cooper writes, "If you could die without attending law school, don't attend. It's not worth the trouble, expense and stress."

Cooper also emphasizes the numbers game in law school admissions, saying that "a school will rather admit a student with a 3.5 in a lightweight major such as political science from a no-name state college, over a student with a lower GPA in a heavyweight major from a well-known and highly regarded university." Because the admissions score places heavy emphasis on the LSAT, the book spends an appropriate amount of space on preparing to take that exam.

The book also reaffirms the notion that the only sure way to work for a big city, big firm is to go to one of the top law schools, and get the best grades possible.

After the applicant is accepted, the greatest challenge begins: law school itself. The authors and e-mailers provide useful advice on buying books, study groups, learning to outline, preparing a resume, and advice on whether to use Macintosh computers in law school. (The answer is no; they are not supported.)

Cooper acknowledges that making friends and gaining the respect of colleagues in law school helps cement later professional relationships – but they also warn later in life lawyers against making fools of themselves by trying to reclaim their youth. (I insist that my performance in the *1-L* parody was not embarrassing, and I was sober.) Their advice boils down to the following:

CATHY ROBERTS is a felony trial attorney with the drug team of the Salt Lake Legal Defenders Association. She is also a Utah Bar Journal *editor.*

act your age at parties, and don't be the eager beaver in class. Learning to organize one's thoughts quickly in the face of an unexpected question in class pays off later in court, but asking stupid questions and pursuing irrelevant issues just irritates your classmates.

My greatest frustration in law school was trying to glean the important information from everything thrown at me. I started out wanting to know it all, from the arcane minutiae of civil procedure to the property law professor's own pet theories about the redistribution of wealth in society. By the end of the first semester of my first year, I was ready to give up completely. I found a wonderful study partner: an ex-submariner who was being sent through school by the Navy. (If that's not non-traditional, I don't know what is). He not only seemed to possess a photographic memory, but also had an automatic "delete" button that eliminated the superfluous information law professors love to impart. We became, and are to this day, fast friends, although his military law career and my local career are very different.

My only quibble with the book is the mediocre quality of the book itself, which extends to the editing, the book's design, and the proof-reading. Perhaps the niceties were skipped to keep the book's price down for the impoverished law school applicant. Its shelf appeal is not great. That's a shame, because what's inside is. After nearly thirteen years in practice in family law, litigation, and criminal defense, I agree with the author's conclusion that law school, expensive and stressful as it is, is nonetheless "deeply satisfying, a great achievement, and an intellectual challenge like nothing else."

Commission Highlights

The Board of Bar Commissioners received the following reports and took the actions indicated during their regularly scheduled July 18, 2007 Commission meeting held in Sun Valley, Idaho.

1. Commissioners designated specific goals for the Commission's work during the short term 2007-2008 year.

2. Ex-officio members of the Commission were appointed: (1) The immediate past president of the Bar; (2) the Bar's representative to the American Bar Association; (3) the representative to the ABA's House of Delegates elected by the Utah Members of the ABA; (4) a representative from the Young Lawyers Division; (5) a representative from the Paralegal Division; (6) a representative from the Utah Minority Bar Association; (7) a representative from the Women Lawyers of Utah; (8) the Dean of the S.J. Quinney College of Law; and (9) the Dean of the J. Reuben Clark Law School.

3. Lowry Snow, Nate Alder, Lori Nelson, Rob Jeffs, Steve Owens, Scott Sabey, and John Baldwin were appointed as the Bar Commission's Executive Committee. The members of the Executive Committee were approved as signatories on the Bar's checking accounts.

4. Commission liaisons to sections, committees, and local bars were appointed.

5. Committee chairs were appointed.

6. Voting Commissioners filled out and returned disclosure statements.

7. Lowry Snow assigned Long Range Planning Sub-Committee Chairs Nate Alder, Lori Nelson, Steve Owens, and Rob Jeffs to meet and finalize their proposals for adoption as long range objectives at the next commission meeting.

A full text of this and other meetings of the Bar Commission are available at the office of the Executive Director.

2007 Fall Forum Awards

The Board of Bar Commissioners is seeking nominations for the 2007 Fall Forum Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nominations must be submitted in writing to Christy Abad, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, no later than Monday, September 17, 2007. The award categories include:

1. Distinguished Community Member Award,

2. Pro Bono Lawyer of the Year, and

3. Professionalism Award.

Is this hat a high crime or a mere misdemeanor?

Modification of Rules and Regulations Governing Mandatory Continuing Legal Education (MCLE)

Effective September 1, 2007

Rule 14-414

(b) Filing fees, late fees, and reinstatement fees.
Each lawyer shall pay a filing fee in the amount of $15.00 at the time of filing the certificate of compliance. Any lawyer who fails to complete the MCLE requirement by the December 31 deadline shall be assessed a $100.00 late fee. Lawyers who fail to comply with the requirements and file within a reasonable time, as determined by the Board in its discretion, and who are subject to an administrative suspension pursuant to Rule 14-415, after the late fee has been assessed shall be assessed a $200.00 reinstatement fee, plus an additional $500.00 fee if the failure to comply is a repeat violation within the past 5 years.

Rule 14-417

Miscellaneous fees and expenses

(b) A Lawyer shall pay an administrative fee of $25.00 for preparation and mailing of Certificates of CLE compliance to other MCLE states, for filing of Reciprocal Certificates for lawyers admitted on Motion to the Utah State Bar, for filing of House Counsel Certificates of Compliance from the jurisdiction where the House Counsel maintains an active license, or for lawyers on active status who are not engaged in the practice of law in Utah and request a Certificate of Exemption.

(d) All CLE sponsors who offer any course for a fee shall pay to the Board, within 60 days of presenting the course, a fee of $1.50 per credit hour per attendee. The $1.50 per credit hour fee will cap at $15.00 per attendee.

(e) Any lawyer who is required by this article to apply to the Board for any special accreditation or approval of an educational activity shall pay a fee of $10.00 at the time of application.

Attn: State Bar Associations within the Tenth Circuit

Effective January 1, 2008, the court will amend its local rules. In addition, there is one change to the Federal Rules of Appellate Procedure which will take effect on December 1, 2007. Attached below are links to our website and specifically to a memo regarding the proposed rules changes, as well as redlined and non-redlined versions of the proposed amendments. Interested parties are invited to submit comments on the proposed changes to the Clerk of Court. The comment period will extend through the close of business on Wednesday, October 10, 2007. Comments may be submitted in writing to the Tenth Circuit Clerk's Office care of 1823 Stout Street, Denver, Colorado, 80257, or via email to 10th_Circuit_Clerk@ca10.uscourts.gov.

www.ca10.uscourts.gov/downloads/2008_rules_memo.pdf

www.ca10.uscourts.gov/downloads/2008_Proposed_Rules.pdf

www.ca10.uscourts.gov/downloads/2008_Proposed_Rules_Redlined.pdf

Notice of Approved Amendments to Utah Court Rules

Effective September 1, 2007

Under its expedited rulemaking authority, the Supreme Court has approved amendments to the following Utah court rules. The amendments are effective when indicated but subject to further change after the comment period. **The comment deadline is August 30, 2007.**

Summary of amendments

USB 14-0414 Certificate of compliance; filing, late, and reinstatement fees; suspension; reinstatement. Amend. Increases compliance filing fees, late fees and reinstatement fees. Approved as an expedited amendment under Rule 11-101(6)(F). Subject to further change after the comment period.

USB 14-0417 Miscellaneous fees and expenses. Amend. Establishes a $25.00 fee to send certificates of CLE compliance to other states, for filing reciprocal certificates, for filing house counsel certificates, and for certificates of exemption. Approved as an expedited amendment under Rule 11-101(6)(F). Subject to further change after the comment period.

Nominations Sought for the Peter W. Billings Sr. Award for Excellence in Dispute Resolution

To honor the memory of Peter W. Billings, Sr., a pioneer and champion of alternative dispute resolution in our state, the Dispute Resolution Section of the Bar annually awards the Billings' Award for Excellence in Dispute Resolution. The DR Section is seeking nominations for this award, which will be presented at the Fall Forum on November 16th. The award may be given to a person or an organization.

Past recipients of this prestigious recognition are Gerald Williams, Michael Zimmerman, William Downes, Hardin Whitney, James Holbrook, Diane Hamilton, Karin Hobbs, Palmer DePaulis, and Brian Florence.

Please submit nominations by Friday, October 12, 2007 to Peter W. Billings, Jr., Fabian & Clendenin, 215 South State Street, 12th Floor, Salt Lake City, Utah 84111.

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TPA9501

Discipline Corner

ADMONITION

On July 13, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney failed to deposit clients funds in an attorney trust account thereby commingling personal funds with client funds. The attorney's fee agreement provided that in order for the attorney to represent clients, the clients were required to waive the attorney's duty to act as a fiduciary with regard to the attorney's trust account.

ADMONITION

On July 11, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(b) (Communication), 3.4(d) (Fairness to Opposing Party and Counsel), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

In divorce proceedings, an attorney failed to protect the client's interests by failing to advise the client that the attorney would be out of the country for an extended period of time and failing to get another attorney to cover a hearing while the attorney was out of the country. The attorney also failed to communicate with opposing counsel, including not sending critical information to opposing counsel and not producing documents after the attorney committed to do so.

PUBLIC REPRIMAND

On July 5, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Larry K. Yazzie for violation of Rules 1.4(b) (Communication), 1.5(a) (Fees), 7.1(a) (Communications Concerning a Lawyer's Services), 7.4 (Communication of Fields of Practice), 7.5(a) (Firm Names and Letterheads), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Yazzie represented a client in a criminal matter and the client's son in a personal injury matter. The clients' cases were in another state's jurisdiction. Mr. Yazzie is not licensed in the other state. Mr. Yazzie failed to communicate his status to his client. Mr. Yazzie charged for work that he was not able to complete because he was not a licensed attorney of that state. Mr. Yazzie had misleading letterhead and advertising, including holding himself out to be a specialist in personal injury matters.

PUBLIC REPRIMAND

On June 25, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Denney S. Berrett for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Berrett failed to inform one client about a settlement offer. Without the client's consent, Mr. Berrett settled the case and failed to inform the client of the settlement. In another client's case, Mr. Berrett failed to file an opposition to a motion for summary judgment. Thereafter, Mr. Berrett failed to take any steps to cure the missed deadline, which resulted in the client's case being dismissed with prejudice.

PUBLIC REPRIMAND

On May 25, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Denney S. Berrett for violation of Rules 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Berrett misrepresented the status of the case to a client's daughter, who was acting on behalf of the client. His misrepresentation included the identification of defendants and the type and amount of work he had performed on the case.

ADMONITION

On June 25, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(b) (Communication), 1.4(b) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

In divorce proceedings, an attorney failed to ascertain where the proceedings were filed, and failed to answer the complaint

and appear on behalf of the client. The attorney failed to keep the client reasonably informed after the default was set aside. The occasional phone calls and 2 or 3 e-mails in over a year were not reasonable communications when the matter required immediate action and diligence on the part of the attorney. The attorney failed to adequately communicate with the client to allow the client to make informed decisions regarding the representation. The attorney failed to act with reasonable diligence at the beginning of the representation and also after the default judgment was set aside. The attorney failed to take action, failed to protect the client's interests, failed to act, and failed to complete the matter.

SUSPENSION

On June 20, 2007, the Honorable Ernie W. Jones, Second Judicial District Court, entered an Order of Discipline: One Year Suspension against Thomas A. Blakely for violation of a previous disciplinary order.

In summary:

The Court entered an Order of Discipline: Public Reprimand and Probation on April 27, 2006, placing Mr. Blakely on a one-year probation with certain conditions. Mr. Blakely failed to comply with the terms of his probation and the Office of Professional Conduct initiated an Order to Show Cause proceeding. Based upon Mr. Blakey's failure to comply with the terms of his probation, the Court suspended Mr. Blakely from practicing law for one year.

ADMONITION

On April 9, 2007, the Honorable Joseph C. Fratto, Third Judicial District Court, entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

The attorney was hired to pursue a malpractice action. The attorney filed a complaint to initiate the action. Nearly a year and a half after the action was filed, it was dismissed for failure to prosecute. A month after it was dismissed, and prior to the statute of limitations running, the attorney filed another action on behalf of the client. Eight months after that action was filed, it was dismissed for failure to file a summons. During the time of the filings, the client contacted the attorney for status updates. Many times the attorney failed to return the client's calls. When the client was able to speak with the attorney, the attorney assured the client that the case was proceeding. After the client hired another attorney to review the attorney's work, the client requested the client file. The client file was returned nine months after the request was made. The attorney initially failed to account and return the unearned portion of the retainer. Thereafter, the client filed a malpractice action against the attorney and judgment was entered against the attorney. The attorney returned the retainer as part of the judgment.

Pro Bono Honor Roll

Nelson Abbott	Shelly Coudreaut	Louise Knauer	Stewart Ralphs	Layne Smith	Jenette Turner
Nicholas Angelides	Michael De Voe	Alvin Lundgren	Robin Ravert	Jonathan Stearmer	Melanie Vartabedian
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David Cooley	Elizabeth Hruby-Mills	Lawrence Peterson			
Roberto Culas	Ralph Klemm	Holly Petrik			

Utah Legal Services and the Utah State Bar wish to thank these volunteers for their time and assistance during the months of June and July. Call Brenda Teig at (801) 924-3376 to volunteer.

Introducing the Paralegal Division's New Officers and Directors for 2007-2008

by Sharon M. Andersen, Chair

Back row, left to right: Cheryl Jeffs, Kathryn Shelton, Greg Wayment, Julie Eriksson, Aaron Thompson, Anna Gamangasso, Thora Searle
Front row, left to right: Carma Harper, Tracy Lewis, Sharon Andersen, Tally Burke, Karen McCall, Bonnie Hamp

As the new Chair of the Paralegal Division, it is my honor and privilege to introduce the new officers and directors of the Paralegal Division for 2007-2008. These highly-motivated and dedicated individuals spend many hours of their personal time in service to the members of the Division and the Utah State Bar. Areas of service include attendance at Division and Bar meetings, researching current issues and future trends involving salary and utilization, formulating ways to educate the legal community on the most effective and efficient utilization of paralegals, participating in community service and community activities, presentations at schools, firms, and/or other legal environments about the professional benefits associated with proper utilization of paralegals and membership in the Division. In addition, board members organize and oversee forums for continuing legal education including monthly brown bags. They actively participate on the Bar's CLE committees and are instrumental in securing key presenters for Bar conventions as well as Division CLE events. We would be remiss not to recognize and acknowledge that the Division's involvement and accomplishments since its inception in April of 1996 would not have been possible without the full support of the Utah State Bar and its administration.

As the Division's new Chair and ex officio member of the Bar Commission, I am personally grateful for the support and encouragement I have received from Lowry Snow, Utah State Bar President, Nate Alder, President-Elect, Gus Chin, Immediate Past President, the Bar Commissioners as well as the Bar's administration, and staff. We are indeed fortunate as a section of the Bar to have such a fine caliber of men and women backing the paralegal profession in an effort to work together and devise ways to improve the quality and efficiency of legal services provided to our community. I look forward to serving the Division over this next year. There is still much to be done and the board is constantly seeking ways to improve its leadership of the Division to provide additional benefits and education to its members and the legal community. We welcome your input and encourage your participation. We also invite all lawyer members of the Bar to encourage and support their paralegals' membership in the Division. If you would like more information about the Paralegal Division, please visit our website at utahbar.org/sections/paralegals.

I am pleased to present the Paralegal Division's new officers and directors for the coming year.

Chair and Ex-Officio Member of the Bar Commission, Representing the Paralegal Division, Sharon M. Andersen – Sharon has been a paralegal/legal assistant for 17 years. Since June of 2004, she has worked as a paralegal at the Salt Lake City Attorney's office in the civil division. Prior to working for the city, Sharon spent the first 8 years in law firms working primarily in family law, personal injury, insurance defense, and medical malpractice litigation. From1998 to 2004 Sharon worked as a paralegal/legal assistant in the General Counsel's office of several corporations including IHC, Kennecott Utah Copper, and Huntsman Corporation where she assisted in a variety of litigation matters involving medical malpractice, worker's compensation, labor relations, contracts, chemical exposure, and environmental law as well as becoming contract administrator while employed at IHC. She attended BYU, married and had a family, then returned to school and graduated from the Legal Assistant Program at Westminster College in 1990. Sharon served as CLE Co-Chair of the Paralegal Division from 2005-2007 and in that capacity has actively participated in the Utah State Bar's Spring Convention, Annual Convention, and Fall Forum CLE committees. In August of 2006, she became Chair-Elect of the Paralegal Division and served as the Division's Governmental Relations Liaison to the Utah State Bar's Governmental Relations Committee while also serving on the Division's Executive Committee. She is currently representing the Paralegal Division as an Ex-Officio member of the Bar Commission. Sharon has six children with the youngest having recently graduated from high school. She views her children as her greatest joy in life.

Director-at-Large, Chair-Elect, CLE Lead Co-Chair, LAAU Liaison, Julie Eriksson – Julie will be serving as a Director at Large and Co-Chair of the CLE Committee. She has previously held several positions in the Legal Assistants Association of Utah (LAAU) including Vice President/Education Chair and served two terms as President. She began her legal career in 1992 and has worked at the law firm of Christensen & Jensen, P.C. since 1999. She specializes in the civil litigation areas of personal injury, bad faith, and product liability claims. Outside of work she is married to a cattle rancher and is the mother of three. She is a third grade religious education teacher and works with the Youth for Understanding student exchange program.

Region II Director, Membership Lead Co-Chair, Thora Searle – Thora is the Director for Region II which covers Salt Lake, Tooele, and Summit Counties and is also a member of the CLE Committee for the Paralegal Division. Thora has worked in the legal field since 1972. She spent 21 years of that time working for the Honorable William T. Thurman when he was a practicing attorney at McKay, Burton & Thurman. She is currently his Judicial Assistant at the United States Bankruptcy Court and has been with him at the Court for 6 years. She is married and has 4 children – one of whom joined her in the legal profession – and 13 grandchildren who are the love of her life.

Region III Director, (for Daggett, Uintah, Duchesne, Wasatch, Utah, Juab, and Millard Counties). This position is presently vacant. If you are a member of the Paralegal Division and would like to serve, please contact Sharon Andersen.

Region IV Director, Paralegal of the Year Chair, Suzanne Potts – Suzanne is the Director for Region IV which covers Carbon, Sanpete, Sevier, Emery, Grand, Beaver, Wayne, Piute, San Juan, Garfield, Kane, Iron, and Washington Counties. She has been a paralegal for over 15 years. She is employed by Clarkson, Draper & Beckstrom in St. George, Utah, working primarily in civil litigation. Suzanne is a mediator having completed basic mediation training through the Utah State Bar, Alternative Dispute Resolution in 2001. She is a past member of LAAU, having served as the Southern Regional Director. She presently serves on the Ethics and Paralegal of the Year Award Committees of the Division. Suzanne is very active in the community and is a volunteer mediator for the Juvenile Court Victim Offender Mediation Program.

Director-at-Large, Professionalism, Ethics, Tally Burke – Tally is an in-house paralegal employed with Boart Longyear, assisting the Senior Vice President and General Counsel, Fabrizio Rasetti. She began her career in law over 12 years ago at Kruse Landa Maycock & Ricks where she fell in love with the legal profession. Tally also worked for Durham Jones & Pinegar before joining the Boart Longyear Legal Department. Tally has over 12 years of experience in law related positions, working the last nine years as a paralegal. Tally received her Legal Assistant Certificate in 1996 from Salt Lake Community College. She also received her Associate of Applied Science, with a major in Paralegal Studies in 1997 and her Associate of Science in 2005 from Salt Lake Community College. In 2006, she earned her bachelor's degree in Criminal Justice from Weber State University with a minor in criminal Law and an emphasis in paralegal studies. Tally has been an adjunct professor at Salt Lake Community College. She is a member of the National Association of Legal Assistants (NALA), the Legal Assistant's Association of Utah, as well as the Paralegal Division of the Utah State Bar. Tally is a past Chair of the Paralegal Division (2004-2005) and currently serves as their Professionalism Committee Chair.

Director-at-Large, Community Service, YLD Liaison, Carma Harper – Carma is a paralegal with the law firm of Strong and Hanni. Carma currently works with Bob Janicki and Michael Ford, in the areas of insurance defense, personal injury, construction litigation, and products liability. She received her paralegal certification from the Wasatch Career Institute in 1989. She

previously worked for Deborah Badger, a sole practitioner, and for the law firm of Plant, Wallace, Christensen and Kanell. In 1997, Carma became a licensed realtor, specializing in distressed properties and negotiations with the third party lender. She served as the Relocation Director for Century 21 Gage Froerer from 1997 until 2002. She currently hangs her license with Keller Williams. Carma works well with children who have learning disabilities and is certified to teach Direct Instruction. She is married to Scott Harper.

Director-At Large, Finance Officer, Bonnie K. Hamp, CP – Bonnie is a paralegal at Parsons Kinghorn Harris which specializes in business organization and transactions, commercial litigation, bankruptcy, creditors' rights, environmental regulatory matters, health care law, tax, estate planning, and employment matters. Bonnie began her legal career in 1978 and attained her certified paralegal designation "CP" from NALA. Bonnie has previously served as Region II Director for the Paralegal Division and NALA Liaison for the Legal Assistants Association of Utah. She currently sits on the Unauthorized Practice of Law Committee for the Utah State Bar. Bonnie begins her second consecutive two-year term as Director-at-Large for the Paralegal Division and will also continue as Finance Officer for a second year. Bonnie is married to Richard Hamp, an attorney with the Criminal Division of the Utah Attorney General's Office and they have a 4-year-old son, Dezmond.

Director-at Large, Membership Co-Chair, Tracy Lewis – Tracy has been a paralegal since 2002 when she graduated from Salt Lake Community College with a degree in Paralegal Studies. After graduation, she completed an internship with a criminal defense attorney and then worked at the Salt Lake Legal Defender's Association for about 8 months. Tracy then accepted a job at Epperson & Rencher and worked there for about 3 years. About a year ago she accepted a paralegal position with Richards, Brandt, Miller & Nelson where she primarily works for Robert Wright and George T. Naegle specializing in medical malpractice defense.

Director-at-Large, Website/Blog Committee, Karen McCall – Karen has worked in the legal field since 1999 and is currently a paralegal with Richards Brandt Miller Nelson, specializing in insurance defense and asbestos litigation defense. She has also served as a paralegal for Robert J. DeBry & Associates on the Utah portion of the MDL Fen-Phen class action lawsuit; for Snell & Wilmer on various product liability matters, including Ford Motor Company vehicle rollover crashes; and most recently for insurance defense firm Smith & Glauser. Karen obtained her Paralegal Certificate from Fullerton College in California in 1998, after receiving her B.A. in Communications from California State University, Fullerton. She has been married to John McCall for 15 years, finally deciding to have children after ten, and now spends her time outside of work chasing after her five-year-old daughter Annika and two-year-old son Ian.

Director-at-Large, Secretary, Website/Blog Chair, Aaron Thompson – Aaron is a paralegal employed with Headwaters Incorporated assisting the Associate General Counsel Curtis Brown. Aaron's primary focus is on stock options, Section 16 & Form 4 filings, commercial insurance, mergers & acquisitions, as well as contracts and business entity filings. Aaron graduated from Westminster College with a Paralegal degree, a B.A. degree in English, a minor in political science, with an emphasis in Mandarin Chinese. During Aaron's academic career at Westminster College, he was appointed as the National Constitutional Committee Chair to strengthen the constitutional infrastructure that now serves as the national foundational guidelines for College Democrats of America (CDA). Shortly after, Aaron served on the CDA national board as the National Communications Director under the auspices of the Democratic National Committee in Washington D.C. In 2000 Aaron had the extraordinary opportunity to assist the Gore Presidential campaign as well as direct the 2004 New Hampshire Project opening the door for Westminster students of varying political affiliations the rare opportunity to work directly for Presidential candidates. Aaron is now coordinating Governor Bill Richardson's 2008 Presidential race in Utah. Aaron's academic and working career has provided varying experiences from working for the Utah Attorney General office in the Commercial Enforcement and Consumer Protection divisions to working with local and national governing bodies as well as various Senate and Congressional campaigns around the United States. Aaron looks forward to a long career with Headwaters and is excited about the future of Headwaters' business in China.

Director-at-Large, Bar Journal, Marketing, Greg A. Wayment – Greg grew up in North Ogden, Utah. As a student at Weber State University, he studied Sales and Marketing graduating with a bachelor's degree in 2004. Greg obtained his paralegal certificate from an A.B.A. accredited school, the Denver Paralegal Institute, in January 2005. He previously worked for a large insurance defense firm in Denver, Colorado. Currently, he is a litigation paralegal at the Salt Lake City firm of Magleby & Greenwood, P.C. Greg lives in Bountiful, Utah and enjoys spending time with his wife Jen and their dog Harvey.

Parliamentarian, Deborah Calegory, CP – Deb received her paralegal certification through the American Paralegal Association in 1986 and has worked in the legal field for 25 years. Deb works for the law firm of Barney McKenna & Olmstead, P.C. in St. George in

the areas of business, transactional, and real estate. She was a charter member of the Paralegal Division and has maintained an active role in the Division since its inception. Deb served on the Board of Directors of the Division from 1998 through 2004, and served as the Chair of the Division during 2001-2002. She is currently serving as the Division Parliamentarian. She has also been active in the Legal Assistant Association of Utah, having served as the Southern Region Education Chair and as the Southern Region Director. Deb also maintains an active role in the local St. George community. She prepared curriculum for, and taught the short term intensive training course for paralegals at Dixie State College. She is currently serving on the Board of Directors of Leadership Dixie which is an educational program with the mission of broadening the understanding of local issues for the benefit of new and seasoned community leaders. Deb is proud to be a fifth generation native of St. George. She is married to Tom Calegory who is originally from Salt Lake City. She is a mother to two adult daughters and a ten-year old son and is a grandmother of six. Deb enjoys a variety of culinary and gardening pursuits, and also loves to play and watch sports of all kinds.

Director-at-Large, CLE Co-Chair, Anna Gamangasso – Anna began her paralegal career in February, 1992, working for Salt Lake Legal Aid Society in the area of family law and domestic abuse. She received her Associates Degree along with a certificate from Phillips Junior College that same year. In November 1994, she went to work at the Utah Attorney General's Office in the Child and Family Support Division. In September 2000, she made the move to the Children's Justice Division in the Criminal Non-support Unit. The move from civil to criminal prosecution was a favorable one. Anna has a daughter and a son. Her daughter gave her two handsome grandsons who just happen to be the highlight of her life. She enjoys taking mini road trips to anywhere and to just hang out with her boys.

Director-at-Large, UMBA Liaison, Website/Blog Committee, Cheryl Jeffs – Cheryl is a new member of the Paralegal Division's Board of Directors. She has been a paralegal for 15 years and is currently a paralegal at the Law firm of Strong and Hanni where she works in the areas of insurance defense and personal injury. Cheryl received her paralegal certificate from Wasatch Career Institute in 1990. She received her CP designation from NALA in September 2005. Cheryl previously worked for the Utah Attorney General's Office in the Criminal Non-support Division. She is married and has four children and two grandchildren.

Ex-Officio Director (Immediate Past Chair), Kathryn K. Shelton – Kathryn has been a paralegal for 12 years, working the last 9 years as a paralegal with the law firm of Durham, Jones & Pinegar primarily in the Corporate & Securities section. Prior to joining Durham Jones & Pinegar, Kathryn was a paralegal for 3 years with the Huntsman Corporation in Salt Lake City, Utah. Kathryn has substantive experience in corporate/commercial transactions including mergers and acquisitions, business organization, securities and real estate, as well as experience in immigration and intellectual property issues. Kathryn has over 23 years of law-related work experience, beginning in 1983 as a legal secretary at Van Cott, Bagley, Cornwall & McCarthy and in 1987 working in-house with the first General Counsel of the Huntsman companies. From June 2006 to June 2007, Kathryn served as Chair of the Paralegal Division and as Ex-Officio on the Bar Commission representing the Paralegal Division. Kathryn served as the Paralegal Division's Region II Director and Finance Officer from 2004 to 2006, and has served on the Executive Committee, the CLE Committee, and the 10th Anniversary Committee. In addition to being a member of the Paralegal Division, Kathryn is also a member of NALA. Kathryn was born in Hamilton, New Zealand, and accompanied her parents when they returned to Utah when she was almost four years old. She received an Associate Degree from Ricks College (now BYU-Idaho). She is married to Wesley Shelton and they are the parents of three children.

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
09/20/07	**NLCLE: Family Law – Enforcing Orders & Modifications.** 4:30 – 7:45 pm. Pre-registration $60 YLD members, $80 others. Door registrations: $75 YLD members, $95 others.	3 hrs CLE/NLCLE
09/20/07	**Annual Estate and Charitable Gift Planning Institute –** Estate Planning Hallmarks: Compliance and Complexity: Roy M. Adams and Conrad Teitell, Satellite Broadcast, Wells Fargo Center, 23rd Floor. FREE. Register by email to theresa.breinholt@wellsfargo.com	6 hrs incl. 1 Ethics
09/27–28/07	**Advanced Directives.** 8:00 am – 4:45 pm. To educate lawyers, their assistants, and other individuals who intend to facilitate the advance care planning process in Utah. Cost $100 before 09/19/07, $150 thereafter.	12 hrs
10/01–02/07	**52nd Annual Estate Planning Seminar.** Washington State Convention and Trade Center Sixth Floor, Ballrooms A, B, and C on Pike Street, between 7th and 8th Avenues, Seattle. Registration before 09/17/07 $440, $460 after.	14.5 hrs incl. 1 Ethics
10/02–03/07	**Eighth Annual Utah Land Use Institute.** Two-day seminar getting you up to date with the latest trends and developments in land use and eminent domain law and practice. Red Lion Hotel and Conference Center, 161 West 600 South, Salt Lake City. $125 one day or $225 both days early registration before 09/20; $130 or $240 after.	Approx. 12 hrs
10/05/07	**Sixth Annual ADR Academy – Dealing with Difficult Conversations: Advanced Advocacy Skills for Attorneys.** 8:30 am – 2:30 pm. $120 YLD and ADR Section Members, $135 others. $25 ADR Section membership dues for lawyers or nonlawyers. Lunch included.	5 hrs includes 3 hrs Ethics
10/12/07	**Representing the Asylum Seeker.** A practical course for lawyers with little or no previous asylum law experience. **FREE** to those willing to commit to represent, *pro bono,* at least one Utah-based asylum seeker within the next 24 months, otherwise $200.	7 hrs
10/18/07	**NLCLE: Gotchas – Nibbled to Death by Ducks.** 4:30 – 7:45 pm. Pre-registration $60 YLD members, $80 others. Door registrations: $75 YLD members, $95 others. Co-sponsors: NLCLE Committee and UTLA. Developed by Frank Carney.	3 hrs CLE/NLCLE
10/30/07	**Evening with the 3rd District Court.** 6:00 – 8:00 pm. Sponsored by the Litigation Section, Utah State Bar. Cost TBA.	2 hrs CLE/NLCLE
11/02/07	**New Lawyer Required Ethics Program.** 8:30 am – 12:30 pm. $55.	Fulfills New Lawyer Ethics Requirement
11/16/07	**Fall Forum.** 8:00 am – 5:15 pm. Salt Palace in Salt Lake City. A full day of CLE and networking for attorneys, paralegals and companies providing services and products to the legal community. Keynote speaker – Governor Jon Huntsman, Jr. $130 before 11/02/07, $160 after – non-lawyer assitant, $70 before 11/02/07, $95 after.	7 hrs CLE/NLCLE
12/14/07	**Lawyers Helping Lawyers Ethics Program.** 9:00 am – 12:15 pm. Pricing TBA.	3 Ethics hrs
12/18/07	**NLCLE: Wills and Trusts II: Settling Estates Over $1.2 Million.** 9:00 am – 12:00 pm. Troy Wilson – presenter. Pre-registration $60 YLD members, $80 others. Door registrations: $75 YLD members, $95 others.	3 hrs CLE/NLCLE
12/20/07	**4th Annual Benson & Mangrum on Evidence.** Update to the Utah Rules of Evidence including the significant change to Rule 702. 8:15 am – 4:00 pm (lunch on your own.) $230 with book, $125 without book.	6.5 hrs CLE/NLCLE

To register or to access an agenda online go to: www.utahbar.org/cle. If you have any questions call (801) 297-7036.

Classified Ads

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Bar Member Rates: 1-50 words – $35.00 / 51-100 words – $45. Confidential box is $10 extra. Cancellations must be in writing. For information regarding classified advertising, call (801)297-7022.

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CAVEAT – The deadline for classified advertisements is the first day of each month prior to the month of publication. (Example: April 1 deadline for May/June publication.) If advertisements are received later than the first, they will be published in the next available issue. In addition, payment must be received with the advertisement.

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Holland & Hart LLP's Boulder, Denver, and Salt Lake City offices seek experienced patent attorneys, Partners and Associates, to work in our dynamic Intellectual Property group. Prefer associates with 3+ years' experience preparing and prosecuting patent applications. All technical backgrounds considered. Particularly interested in chemistry and biochemistry backgrounds. Strongly prefer some book of business and ability to develop business. Required: excellent client relationship skills; excellent academic record; and strong analytical and writing skills. Submit résumé, cover letter, and transcript to Carol Custy, Recruitment Coordinator, P.O. Box 8749, Denver, CO 80201-8749; e-mail: cbcusty@holllandhart.com; or fax: (303) 975-5461. EOE.

Rooker Mohrman Rawlins & Bailey LLP, an AV-rated firm has the following openings: S.L.C. – Associate Attorney with 1-4 years experience of quality civil litigation experience. Southern Nevada – Potential Partner with five to ten years of strong complex commercial litigation experience and significant related transactional experience. Practice areas include commercial, construction, business and domestic litigation, real estate, and finance transactional work. Candidates will have strong research and writing skills, excellent academic credentials, and motivation to perform outstanding work in a small firm environment. generous compensation and benefits package. Please forward resumes and writing samples to prooker@rmrblaw.com or fax to (801) 534-1203

Land Capital Group, Inc., has an opening for a Vice President of Legal Services/General Counsel. Land Capital has 80 employees in multiple offices across the country. Requires 10+ years of commercial real estate experience with a focus on retail transactions including land acquisitions/dispositions, CC&Rs, public/private financing, mixed use, leasing, joint-ventures, etc. Duties include all types of transactions, managing the in-house legal team and acting as a member of the senior management team. Compensation includes salary, bonus, equity, and an excellent benefits package. Position is located in Park City, UT. Please send resume to mverhoogen@landcapital.com.

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CONTRACT SPECIALIST – 3M Health Information Systems, Inc. (Murray, UT) a leader in providing healthcare funding and performance management solutions, seeks a Contract Specialist. In this role, you would negotiate business contracts and amendments (e.g. SW license agreements, consulting agreements, etc.) working with sales, customers and attorneys. Requirements include a bachelor's degree in Business or related field/or equivalent work experience and a minimum of 5 years experience conducting business/contract negotiations. For confidential consideration, please apply online at www.3M.com/careers using the key word "Contract Specialist" or FAX cover letter and resume to 3M Talent Management at (651) 733-3572.

APPLICANT FOR CRIMINAL CONFLICT OF INTEREST CONTRACT – The Salt Lake Legal Defender Association is currently accepting applications for several trial and appellate conflict of interest contracts to be awarded for the fiscal year 2008. To qualify for the trial conflict of interest contract, each application must consist of two or more attorneys. Contract compensation will be increased in the upcoming year, therefore, significant experience in criminal law is required. Please contact F. JOHN HILL, Director, of Salt Lake Legal Defender Association, (801) 532-5444.

Idaho's largest firm seeks associates for its Boise office with an interest in a transactional and/or real estate practice. One to no more than three years of private or corporate experience in either area preferred. Strong law school academic record required. All replies confidential. Contact Eugene A. Ritti at Hawley Troxell Ennis & Hawley, P.O. Box 1617, Boise, ID 83701, ear@hteh.com.

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Fiduciary Litigation; Will and Trust Contests; Estate Planning Malpractice and Ethics: Consultant and expert witness. Charles M. Bennett, 257 East 200 South, Suite 800, Salt Lake City, UT 84111; (801) 578-3525. Fellow, the American College of Trust & Estate Counsel; Adjunct Professor of Law, University of Utah; former Chair, Estate Planning Section, Utah State Bar.

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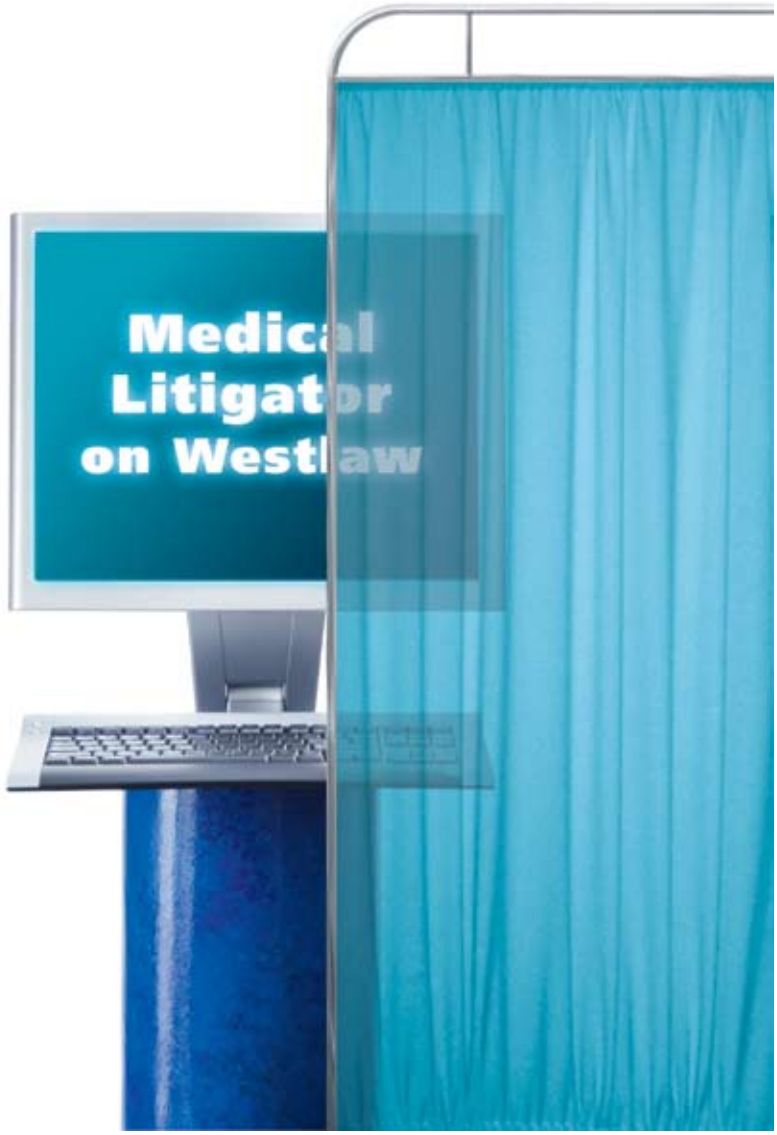

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