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Cover Photo

Wind Cave, Logan Canyon by Utah State Bar member Brian Craig.

*BRIAN CRAIG is a solo attorney in Logan, Utah. He also teaches online legal courses at Purdue University Global and is the author of *Cyberlaw: The Law of the Internet and Information Technology* (Pearson) and *Stringfellow Acid Pits: The Toxic and Legal Legacy* (University of Michigan Press). Brian currently serves as a prelitigation panel chair with the Utah Division of Occupational and Professional Licenses for medical malpractice cases.*

Asked how he came to take this photo, Brian said "I went hiking solo up the Wind Cave trail in Logan Canyon on a beautiful spring day. I stood at the back of the delicate triple arch and natural cave with a limestone outcropping to capture the image. Fortunately, my office and home are located just a few miles from the mouth of Logan Canyon so I can venture out for exploring."



SUBMIT A COVER PHOTO

Members of the Utah State Bar or 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 (compact disk or print), along with a description of where the photographs were taken, to Utah Bar Journal, 645 South 200 East, Salt Lake City, Utah 84111, or by e-mail .jpg attachment to barjournal@utahbar.org. Only the highest quality resolution and clarity (in focus) will be acceptable for the cover. Photos must be a minimum of 300 dpi at the full 8.5" x 11" size, or in other words 2600 pixels wide by 3400 pixels tall. If non-digital photographs are sent, please include a pre-addressed, stamped envelope if you would like the photo returned, and write your name and address on the back of the photo.

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The Editors of the *Utah Bar Journal* want to hear about the topics and issues readers think should be covered in the magazine. If you have an article idea, a particular topic that interests you, or if you would like to review one of the books we have received for review in the *Bar Journal*, please contact us by calling 801-297-7022 or by e-mail at barjournal@utahbar.org.

GUIDELINES FOR SUBMISSION OF ARTICLES TO THE UTAH BAR JOURNAL

The *Utah Bar Journal* encourages the submission of articles of practical interest to Utah attorneys and members of the bench for potential publication. Preference will be given to submissions by Utah legal professionals. Submissions that have previously been presented or published are disfavored, but will be considered on a case-by-case basis. The following are a few guidelines for preparing submissions.

ARTICLE LENGTH: The *Utah Bar Journal* prefers articles of 5,000 words or less. Longer articles may be considered for publication, but if accepted such articles may be divided into parts and published in successive issues.

SUBMISSION FORMAT: Articles must be submitted via e-mail to barjournal@utahbar.org, with the article attached in Microsoft Word or WordPerfect. The subject line of the e-mail must include the title of the submission and the author's last name.

CITATION FORMAT: All citations must follow *The Bluebook* format, and must be included in the body of the article.

NO FOOTNOTES: Articles may not have footnotes. Endnotes will be permitted on a very limited basis, but the editorial board strongly discourages their use, and may reject any submission containing more than five endnotes. The *Utah Bar Journal* is not a law review, and articles that require substantial endnotes to convey the author's intended message may be more suitable for another publication.

ARTICLE CONTENT: Articles should address the *Utah Bar Journal* audience – primarily licensed members of the Utah Bar. Submissions of broad appeal and application are favored. Nevertheless, the editorial board sometimes considers timely articles on narrower topics. If an author is in doubt about the suitability of an article they are invited to submit it for consideration.

EDITING: Any article submitted to the *Utah Bar Journal* may be edited for citation style, length, grammar, and punctuation. While content is the author's responsibility, the editorial board reserves the right to make minor substantive edits to promote clarity, conciseness, and readability. If substantive edits are necessary, the editorial board will strive to consult the author to ensure the integrity of the author's message.

AUTHORS: Authors must include with all submissions a sentence identifying their place of employment. Authors are

encouraged to submit a head shot to be printed next to their bio. These photographs must be sent via e-mail, must be 300 dpi or greater, and must be submitted in .jpg, .eps, or .tif format.

PUBLICATION: Authors will be required to sign a standard publication agreement prior to, and as a condition of, publication of any submission.

LETTER 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 emailed to BarJournal@UtahBar.org or 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 that reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published that (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 that advocates or opposes a particular candidacy for a political or judicial office or that 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-in-Chief, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected.

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2021 Utah State Bar Elections

A link to the online election will be supplied in an email sent to your email address of record. You may update your email address information by using your Utah State Bar login at <https://services.utahbar.org/>. (If you do not have your login information please contact onlineservices@utahbar.org and our staff will respond to your request.) Online balloting will begin April 1 and conclude April 15. Upon request, the Bar will provide a traditional paper ballot by contacting Christy Abad at adminasst@utahbar.org.

Candidate for President-Elect

Katie Woods is the sole candidate for the office of President-elect. Utah State Bar bylaws provide that if there is only one candidate for the office of President-elect, the ballot shall be considered as a retention vote and a majority of those voting shall be required to reject the sole candidate.



KATIE WOODS

I have been proud to serve as the Fifth Division Bar Commissioner for the last six years. During my tenure, I was fortunate to be part of many exciting changes and steps forward into the future. From the integration of new technology, to the evolution of the rules governing CLE, and beyond, I have watched as the bar has made great leaps and bounds in an effort to better serve our attorneys, whether urban or rural. I would be honored to continue my service to the bar as Utah State Bar President. I will strive to continue serving our membership by continuing to make the services of the bar as accessible to our members as possible, and by working with our diverse groups and sections to address any deficiencies quickly and efficiently. I ask for your support, and look forward to achieving our common goals together.



Third Division Bar Commissioner Candidates

GREG HOOLE

I am honored to be nominated as a candidate for Bar Commission. I have enjoyed a diverse and rich law practice since graduating from the S.J. Quinney College of Law more than twenty years ago. I have practiced criminal and civil law, worked in large and small law firms, and divided my litigation practice between plaintiffs and defense work. Now, as a mediator, I enjoy bringing adverse parties together to find solutions to even the most complex of problems. I have served on several Bar committees, most recently as chair of the Innovation in Law Practice Committee.

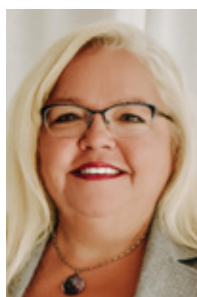


I am familiar with the many challenges facing the Bar. The challenges span a spectrum of issues, practice areas, geographical locations, and generational differences. Some of these challenges include renewed threats to judicial independence and professional self-governance, proposals to tax legal services, barriers to providing meaningful access to justice, and perennial budgetary concerns to properly fund our court system. I hope to have the opportunity to bring my positive energy and experience to bear in assisting the Bar as it navigates these and many other issues in our ever-changing professional landscape.

Please accept my thanks for considering my candidacy.

CHRYSTAL MANCUSO SMITH

For the past three years, I have had the privilege to serve as a Third Division Bar Commissioner and would appreciate your support for a second term.



During my current term, we saw unprecedented changes to the legal profession with the advent of the Sandbox concept and attempts to tax legal services, but none more widely felt than the COVID-19 pandemic. From shifting to working from home (perhaps with remote-learning children), and the forced cancellation of in-person Conventions, CLEs, jury trials, court access, depositions, and more, our practice is changing at a never-before-seen pace.

To ensure that the Bar keeps abreast of the ever-changing landscape, I worked with bar members, section leaders, and community members to find solutions to soften the impact on our day-to-day practice of law. I have worked with the MCLE

committee (I am also a member) and Bar leadership to increase the availability and affordability of CLE opportunities, including an expansion of the definition of “live” CLE. I will remain an advocate for continued financial responsibility of the Bar to its members, to increase the availability of bar services and pro bono service opportunities, and to ensure that your questions, concerns, and complaints are heard.

MARK W. PUGSLEY

I would like to thank you for electing me to serve as a Bar Commissioner for the past three years. It has been a very interesting term in many ways. In August of 2020 the Utah Supreme Court approved the regulatory “sandbox” and significant changes to our ethical rules. I was a member of the Bar’s “Regulatory Reform Committee” which was assigned to study the proposal, to provide feedback to the Supreme Court, and to educate the members of the Bar. Our committee devoted many, many hours to this process. I participated in a number of CLE panels and spoke directly with a large number of law firms and individual attorneys about the proposal. I believe that these meetings and panels provided members of the Bar with information to make well-informed comments on the reforms.



There were other significant issues we addressed during my three years on the Bar Commission, including the proposed tax on professional services and challenges related to the COVID-19 pandemic. This work is ongoing, and I hope you will permit me to continue to contribute my voice and time to the work of the Bar Commission. I would be honored to receive your vote.

Biography

Mark Pugsley’s practice is focused on whistleblower claims and litigation involving financial fraud and financial institutions. He primarily represents victims of investment fraud and Ponzi schemes, and helps them recover their losses through FINRA arbitration, whistleblower claims and civil litigation on an hourly or contingency-fee basis. He frequently speaks and writes about affinity fraud and Ponzi schemes and has been retained to act as an expert witness in both civil and criminal securities cases. He holds active licenses to practice law in Utah and California.

Mr. Pugsley received graduate degrees from Duke University (JD ‘94, MA ‘94) and his undergraduate degree from the University of Utah (BS ‘91).

Fourth Division Bar Commissioner Candidate

TYLER S. YOUNG

I have been a member of the Utah State Bar and United States District Court since 2006 and believe my education and experience have prepared me well to serve as a commissioner. I've litigated hundreds of personal injury cases and tried over a dozen multi-day jury trials for injured plaintiffs. I've also been involved with multiple successful appeals to the Utah Court of Appeals and the Utah Supreme Court.



I currently serve on the Board of Governors of the Utah Association for Justice; wherein I serve on the Amicus Committee and Membership Development Committee. I was privileged to attend and become a graduate of the Trial Lawyer's College (founded and led by Gerry Spence), and am honored to have been recognized by the National Trial Lawyer's Top 40 under 40.

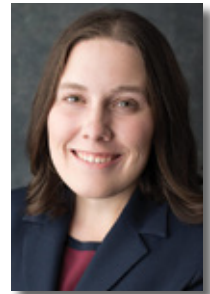
If elected, I will work hard to listen to your concerns, and do my best to oppose changes that degrade our profession. To the extent it is possible, I will be a voice of reason and provide our district's perspective regarding proposed and pending regulatory changes.

I appreciate your vote and look forward to serving the Utah State Bar.

Fifth Division Bar Commissioner Candidate

MEGAN MUSTOE

Megan Mustoe lives and practices law in Richfield, Utah. She is a graduate of the University of Utah S.J. Quinney College of Law. Megan is also an alum of the Utah Bar Leadership Academy. Locally, she is active in the Richfield Rotary International, Sevier County's Economic Development Council, and a previous board member for the Richfield Area Chamber of Commerce. She is a founding board member of the revitalized Utah Wildlife Federation and provides south-central board representation to Allies with Families. In 2020, Megan was a nominee for both the City of Aurora and Salina City Justice Court Judgeship vacancies. Megan is proud to live in rural Utah and passionate about equitable access to legal resources for Utah's communities, courts, and practitioners.



If elected as the Fifth Division Commissioner, Megan would:

- encourage the Utah Bar Association to perpetually continue 100% online CLE acceptance;
- build more structure and support for new practitioners in remote communities;
- provide and present rural perspectives to the Utah Bar Commission; and
- promote expansion of innovative court practices and programs to the entire state.



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Parsons Behle & Latimer is pleased to announce the addition of two new attorneys to its Employment and Labor practice team: **Jacob T. Muklewicz** joins the Salt Lake City office as shareholder and **Laurence B. Irwin** joins the Reno office as of counsel.



Jacob T. Muklewicz

801.536.6896 | jmuklewicz@parsonsbehle.com

Jacob T. Muklewicz counsels and advises large multinational corporations, local businesses, individual investors and professionals in areas involving employment-based immigration law. Mr. Muklewicz also counsels companies and foreign nationals regarding visa petitions, immigration petitions, permanent residence, labor certification, PERM process and more.



Laurence B. Irwin

775.789.6545 | lirwin@parsonsbehle.com

Laurence B. Irwin specializes in Employment and Labor law and has worked extensively with Department of Energy contractors in southern Nevada as well as served as a member of the Judge Advocate General's Corps for the Nevada National Guard. Mr. Irwin has litigated federal employment matters and is experienced in managing insurance portfolios for multi-state operations, general liability, unemployment, security classification, government contracting, and operational law matters. He specializes in Nevada Worker's Compensation law and has handled military justice, personnel law, Freedom of Information Act matters and estate planning for Guard soldiers.

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We've Come A (Little) Way, Baby.

by Heather Farnsworth

Diversity, Inclusion, and Equity: These may seem like the latest “corporate buzz words” but in reality, the Utah State Bar has been formally dedicated to improving diversity among its Board of Bar Commissioners and among bar membership for decades. This began with creating ex-officio positions on the Board of Bar Commissioners for the Utah Minority Bar in 1992 and Women Lawyers of Utah in 1993,¹ and more formally by adopting the Utah State Bar Statement on Diversity and Inclusion on December 2, 2011. The statement is as follows:

The Bar values engaging all persons fully, including persons of different ages, disabilities, economic status, ethnicities, genders, geographic regions, national origins, sexual orientations, practice settings and areas, and races and religions. Inclusion is critical to the success of the Bar, the legal profession, and the judicial system. The Bar shall strive to:

1. Increase members' awareness of implicit and explicit biases and their impact on people, the workplace, and the profession;
2. Make Bar services and activities open, available, and accessible to all members;
3. Support the efforts of all members in reaching their highest professional potential;
4. Reach out to all members to welcome them to Bar activities, committees, and sections; and
5. Promote a culture that values all members of the legal profession and the judicial system.

Utah State Bar Statement on Diversity and Inclusion, UTAH STATE BAR (Dec. 2, 2011), <https://www.utahbar.org/bar-operations/#policies>. Diversity, in this policy, relates to gender, race, and sexual orientation as one might expect, but also reflects a commitment of the Bar to promote diversity with respect to geographic regions, practice settings, etc. This is reflected in practice as the Bar strives to include members from each Division and from a variety of practice areas when forming committees or evaluating awards, and so on.

While diversity is important, simply giving someone a seat at the table is not enough. In order to promote inclusion and to truly benefit from diversity, we must encourage and promote diverse candidates to fully participate. Vernā Myers explains it best, “Diversity is about who is represented in the organization, whereas inclusion speaks more to who is respected, expected and integrated into an institution.” *Diversity and Inclusion*, THE VERNĀ MYERS COMPANY, available at <https://www.vernamyers.com/diversity-training/> (last visited Feb. 16, 2021). She further describes it in these terms: “Diversity is being invited to the party. Inclusion is being asked to dance.” *Id.*

At the time the Bar's policy for Diversity and Inclusion was adopted, the Board of Bar Commissioners included twenty-one members, eleven men and ten women, with only two members who were not Caucasian. Further, of the fifteen voting members only six were female and only one member was not Caucasian. Bar Leadership was fairly reflective of Bar membership. In a 2011 survey, Bar members identified themselves as 76% male and 24% female. *2020 Utah State Bar Member Survey*, UTAH STATE BAR (Apr. 8, 2020), at 96, <https://www.utahbar.org/wp-content/uploads/2020/11/Bar-Survey.pdf> [hereinafter Bar Study]. Bar membership was 91% Caucasian, 2% Hispanic/Latinix, 2% Multiracial, 1% Asian/Pacific Islander, 0% American Indian/Native American, 0% Black/African American, 1% other, and 2% preferring not to disclose. The Bar's demographics differed significantly from Utah's demographics at the time, especially regarding gender. According to the United States Census Bureau, population estimates in 2010 showed an estimated 49.6% of the population reported as female. QUICKFACTS: UTAH, U.S. CENSUS (Dec. 2, 2011), <https://www.census.gov/quickfacts/fact/table/UT/PST040219#PST040219> (last visited Feb. 16, 2021). The Bar's population more closely reflected the Utah Population with respect to race; however, there was a significant disparity in the amount of Hispanic/Latinix lawyers when compared with the overall population. In 2010 Utah's population was 77% Caucasian, 14.4% Hispanic/Latinix, 2.6% Multiracial, 2.7% Asian, 1.1% Native Hawaiian or Pacific Islander, 1.5% American Indian/



Native American, and 1.5% Black/African American.

The Bar's most recent survey shows some slight improvement, with female membership increasing from 24% to 29%, while the 2021 Utah population estimates shifted only .1% to 49.7% female. *Bar Study* at 5; *Utah Population 2021*, WORLD POPULATION REVIEW <https://worldpopulationreview.com/states/utah-population> (last visited Feb. 16, 2021). However, with respect to race, there is still a significant discrepancy between the demographics of the population of the Bar's members and Utah's general population, with little change in any of the reported numbers: Hispanic/Latinx members increased from 2% to 3%, Asian/Pacific Islanders increased from 1% to 2%, American Indian/Native American members increased from 0% to 1%, as did Black/African American members, and those preferring not to disclose increased from 2% to 5% *Bar Study* at 9. However, multiracial members decreased from 2% to 1%. *Id.*

Currently, the Board of Bar Commissioners more closely reflects Utah's general population with respect to gender. The Board is comprised of twenty-seven members: thirteen of whom identify as male and fourteen of which identify as female (51.85%). Bar leadership reflects a similar make up: the executive committee is comprised of three identifying as male and four identifying as female (57.15%). However, some disparity remains with voting members of the Bar Commission, as nine identify as male and only six identify as female (40%). Regarding race, the Board of Bar Commissioners has much room for improvement with approximately 88.89% of its members, and 93.33% of voting members, being Caucasian.

This is where the concept of equity comes in to play. If equality is the goal, equity is the means to achieve this. Equality is typically defined as treating everyone the same and giving everyone the same access to opportunities. *Equality*, DICTIONARY.COM, <https://www.dictionary.com/browse/equality> (last visited Feb. 16, 2021). Workplace equality does not take demographic related needs into account, while equity strives to identify the specific requirements of an individual's needs based upon ethnicity, age, gender identity, economic status, and so on. *The Important Difference between Workplace Equity and Equality*, KELLY (July 15, 2021) https://www.kellyservices.us/us/business_services/business-resource-center/managing-employees/the-important-difference-between-workplace-equity-and-equality.

In a recent CLE on the subject, ABA President Patricia Lee Refo explained equity with this example: Suppose Ms. Refo, a woman who stands at five feet something and Mr. LeBron James, a professional basketball player who stands at six feet and nine inches are each trying to see over the top of a nine-foot-tall fence. If both persons are given an equal stool measuring two feet and

six inches, only Mr. James is able to see over the fence. If we take into account that Ms. Refo and Mr. James are not at the same starting point with respect to height and we provide Ms. Refo a step-ladder measuring three feet six inches instead, we have achieved equity as both individuals may now see over the fence.

So, why is equity important? Equity is important in the workplace as it has been demonstrated to improve cognitive diversity in decision-making, to drive engagement by employees, and to prevent dissatisfaction and employee attrition, all of which result in an improved bottom line. Chiradeep BasuMallick, *5 Reasons to Focus on Workplace Equity Alongside Diversity and Inclusion*, HR TECHNOLOGIST (Mar. 27, 2020), <https://www.hrtechnologist.com/articles/diversity/workplace-equity-diversity-inclusion/>. More importantly, equity is an essential concept in ensuring access to justice. Increased access to justice depends on public confidence in the justice system. *Necessary Condition: Access to Justice*, U.S. INST. OF PEACE, <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice> (last accessed Feb. 16, 2021). Public confidence in the justice system is more likely to increase with a judiciary and bar that reflects the make-up of the public.

Historically, the legal profession has been one of the least diverse professions in the nation, and it continues to be so. *Diversity in the Law: Who Cares*, AM. BAR ASSOC. (Apr. 30, 2016), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2016/spring2016-0416-diversity-in-law-who-cares/>. According to the ABA,

diversity in the legal profession is necessary to demonstrate that our laws are being made and administered for the benefit of all persons. Because the public's perception of the legal profession often informs impressions of the legal system, a diverse bar and bench create greater trust in the rule of law.

Id.

The ABA argues, "Beyond the public perception and confidence in our system diversity affects the quality of legal services and judicial decisions." *Id.* The ABA finds "A diverse legal profession is more just, productive, and intelligent because diversity, both cognitive and cultural, often leads to better questions, analysis, solutions, and processes." *Id.*

So how do we, as a Bar, become more representative of our membership and our general population? Again, the answer is equity. We need to take the initiative to provide opportunities to diverse populations to give that extra boost of encouragement. To harken back to Ms. Myers's analogy, we need to not only

invite people to the party, but invite them to dance, and to participate on the party planning committee. As a result of the results of the survey, the Bar has created the Bar Committee on Early Diversity Outreach, chaired by third division representative Mark Morris, who is working in conjunction with the Utah Center for Legal Inclusion to introduce young kids to lawyers of all backgrounds to encourage them to consider pursuing a legal education. In addition, we have created a new position, Director of Diversity, Inclusion, and Equity, to be held by the Bar's CLE director Michelle Oldroyd, to ensure the Bar offers educational programing consistent with these ideals.

In my relatively short time on the Bar Commission, I have felt a shift demonstrated beyond the numbers, with respect to Bar leadership. I joined the commission as an ex-officio representative of the Women Lawyers of Utah in 2012. When I noticed the lack of female voting commissioners, I decided to run to represent the third division. At the time, a female colleague, who was also heavily involved with the Women Lawyers of Utah, planned to run as well. Though there were multiple positions available, there was concern that two women running might somehow dilute the vote for each of us. Admittedly, I too believed this may be a problem, and felt some relief when my colleague elected

not to run for other reasons. In retrospect, I am embarrassed and ashamed of this thinking, but at the time, it seemed a valid concern. When I ran for President-Elect, in 2019, the consensus seemed to be in part, that it was "time" for a woman to be president again. When I was elected, I became the sixth female president of the Utah State Bar. The current President-Elect, Heather Thuet, and I will be the first two women to serve consecutive terms. Now, the current candidate for President-Elect, Katie Woods, will mean three women will serve in a row, and we are getting closer to the distinction becoming less about our gender. Ms. Woods, for example, is a small firm attorney from St. George, adding an entirely different level of diversity. I might add, there was little to no discussion over the gender of these candidates, at least that I knew of, and the discussion focused on the years of service each offered to the Board of Bar Commissioners and their plan of leadership going forward. The culture is shifting at this level, and my hope is that this shift will soon pass to the general membership of the bar so that we may more accurately reflect the general population of Utah in our legal community, to ensure access to justice is justice for all.

1. In 2016, an ex-officio position was added to the Board for the LGBT & Allied Lawyers of Utah. This Affinity Bar was formed in 2014.

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Silver Linings of the Pandemic

by The Hon. Gregory K. Orme

Let me get this out of the way right off the bat: The COVID-19 pandemic has been a horrible scourge on the world, and we would have all been much better off without it. As dark clouds go, this is the darkest most of us have known. But always something of an optimist, I recognize the validity of the old adage that every cloud has a silver lining.

I don't intend to treat the ancillary benefits of the pandemic that apply more generally. These are familiar to all of us by now. Wearing masks out in public has become acceptable as a public health tool. Even post-pandemic, it is to be hoped that people who do not feel well, or who are coming off a cold, etc., will thoughtfully don a mask when going to the store or getting on an airplane. Many families benefited considerably from the bonding opportunities presented by spending so much time at home together. (But not all. Domestic violence and child sexual abuse cases were up in many places.) Pet adoptions from shelters increased significantly, at least for a while. Many parents and guardians, some of whom had not been involved in their children's education beyond inquiring, "Have you done all your homework?," at some point in the evening, came to have a deep appreciation for educators after being required to take a much more active, daily role in helping to manage online education. Families, like mine, who are dispersed all around the country came to learn about Zoom and similar technologies, and the opportunities they afford to stay in better touch than via group texting. I suspect my extended family, even after the pandemic is behind us, will continue our Monday night Zoom get-together. My sainted mother certainly hopes that will be the case, as do I.

In this essay, I want to identify the silver linings that are somewhat unique to our profession. I recently participated in the annual conference of the Council of Chief Judges of the State Courts of Appeal – via Zoom, of course – and I can say with some confidence that, in varying degrees, these silver linings have national relevance. And I hasten to add that appellate judges universally recognize how much easier it is to hoe our row as compared to the much more significant challenges faced by our colleagues on the trial bench. Reading briefs and getting a couple of lawyers together for fifteen-minute arguments is a thousand times easier than managing a busy trial docket and

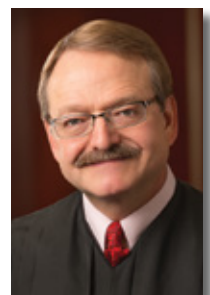
trying to hear from witnesses and empanel juries. (That may sound like hyperbole, but I did the math.) So please understand that, aside from the next paragraph, most of what I have to say is true of only appellate courts.

The first silver lining is not as big a deal as the other two, perhaps, but it is a personal favorite of mine. The unsanitary practice of exchanging viruses and bacteria while grabbing hold of the hands of not only dear friends, but also newly introduced strangers, and giving those hands a vigorous shake – of all things – is behind us at last. Over the last year, we have all gotten out of that habit. So why start it up again? It was always kind of gross. Those who feel the need for an actual touch in this situation can continue with the elbow tap or fist bump, although I personally see no reason why we couldn't simply give a nod or little bow and offer a verbal greeting as a perfectly fine substitute for the traditional exchange of germs.

The two more significant silver linings are what we learned about the feasibility of working remotely and what we learned about conducting proceedings and meetings in a virtual format, rather than requiring everyone to always come to the courthouse.

I personally had a real awakening about working remotely. I always did a good deal of work outside of the office, finding that home was a more conducive environment than the office for reading briefs and spending quality time revising my opinions and reviewing the opinions of my colleagues. But I always felt like my law clerks should be in the office where they had ready access to books, the appellate record, and desktop computers with all the right programs loaded and with the assurance of

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online security appropriate to our work. To be sure, much of this had already changed over the course of my 30+ year career as an appellate court judge. Everybody has a laptop. Virtual personal network capability came into existence. The record in most cases can now be accessed electronically. Those of us who prefer reading statutes or cases in hardbound books are becoming few and far between. And the digests, encyclopedias, and Shepard's have either moved to online formats or been rendered obsolete by Westlaw and LexisNexis.

Long story short, I was absolutely amazed, and more than a little surprised, how seamlessly we made the shift from in-person work to all but exclusively working remotely. During the conference with my colleagues from across the country, I went so far as to suggest that my experience was that our productivity actually went up – not down – when we switched to working from home. This perspective was not unanimous, but it was the overwhelming consensus.

So, if everyone is happy working at home and productivity has been enhanced, why will we all hurry back to the office? I suspect we won't. Those who live some distance from the courthouse save money on gas and public transportation fares by working from home. Those with young kids have found ways to juggle their schedules so as to obviate, or greatly reduce, the need for childcare. Our poor air quality and traffic congestion will only be improved if more people telecommute. One judge from the Midwest is very much looking forward to things getting back to normal and having everyone back in the office, but he anticipated there would be some resistance to implementing that directive

now that everyone is comfortable with a different arrangement.

To be sure, there are some negatives to working exclusively from home. There are some downsides in the broader societal context, including negative impacts on commercial real estate and leasing; decreased utilization of downtown bars, restaurants, gyms, and retail stores, many of which have had to close; unemployed daycare and hospitality workers, etc. But even in my specific work context, there are some drawbacks to working exclusively from home, including the loss of personal contact, the chance to go to lunch or for a drink spontaneously, and really getting to know people in a way that you simply cannot do via cell phone and computer screen. I had the good fortune of continuing throughout the pandemic to work with two excellent law clerks whom I knew well and got along with fabulously when the pandemic hit. We already understood each other's quirks and had our routines in place, and it was quite easy to shift all of that to a virtual platform. I know that my colleagues who brought on a new law clerk during the pandemic were challenged in getting acquainted with them, getting them trained, and integrating them into the broader Court of Appeals family.

There will be considerable variation from office to office and courthouse to courthouse, but after we are all vaccinated and the pandemic is waning, I envision leaving it up to my law clerks whether they will work from home or in their courthouse offices, with just a couple of exceptions. We will plan to be at the office to celebrate a birthday, on days when we are scheduled to have oral arguments, and for our quarterly staff meetings (if those are reinstituted). Otherwise, I am happy to let them decide where they can work most comfortably and productively.



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For myself, I can foresee settling into a routine that has me in the office two days a week and working remotely the rest of the time, and, quite honestly, those office days would have more to do with the social opportunities thereby presented and the opportunity to combine a day in the office with an appointment with the dentist, doctor, or barber than because I can work so much more effectively at the office. That just isn't true for me and my staff, and it took a real sea change, like the pandemic, to bring that lesson home.

The consensus of my colleagues nationally was much less charitable to virtual hearings as an effective substitute for in-person arguments than to remote work as a meaningful way to take care of how we spend most of our time, namely, reading briefs, drafting opinions, and reviewing and critiquing the opinions circulated by our colleagues. This has lots to do with decorum. Talking heads on a computer screen, even if the technology cooperates fully, simply does not offer the same dignity as proceedings in a real courtroom. Virtual eye contact is not the same as real eye contact. A legitimate ceremonial function is served by attorneys, their clients, and the occasional interested member of the press or public coming to the Matheson Courthouse and having their cases heard by three judges, seated together in robes on an elevated bench, with the

flags of the United States and Utah and the court's seal on display behind them. In short, while I believe that remote work will continue to be a feature of the Court of Appeals' evolving culture, I think we will enthusiastically look forward to returning to the courthouse for the vast majority of our oral arguments as soon as we can responsibly do so.

Notice I said "vast majority." Now that we all know how to do it, I suspect that we will make selective continued use of virtual hearings. Most winters we end up having to cancel oral arguments on one or two bad snow days. It is often a challenge to reschedule those hearings, and of course counsel and their clients are inconvenienced by reason of counsel having to prepare twice for oral argument. In the future, I don't think we would cancel those hearings. I think we would move them to our virtual platform and carry on. Last year, we had to continue a hearing because an attorney had an accident and unexpected knee surgery, rendering the attorney unable physically to make his way to the courthouse. Going forward, I suspect we would shift such an argument to WebEx, assuming the attorney had had adequate time to prepare notwithstanding the unexpected medical difficulties and provided that he or she was not under the influence of strong painkillers or too uncomfortable to prepare for and present his or her argument. There is one other situation where I would expect that we would hold a virtual hearing. Over the years, I have worried about the financial implications of requiring, for example, an attorney from Logan and an attorney from St. George to come to the Matheson Courthouse to present their respective fifteen-minute oral arguments. Occasionally, such attorneys have waived the oral argument opportunity we extended them out of concern for the financial hit their clients would take. Those attorneys should, in my opinion, have the opportunity, instead, to present their argument virtually.

The pandemic will eventually be over, but it won't be over in the same definitive way that a personal illness or bad snowstorm might be over. For years to come, I suspect, "before the pandemic" and "during the pandemic" will be phrases that will regularly pepper our speech and qualify our comments. COVID-19 will have changed – and permanently – lots of what was once taken for granted, or at least that which was familiar and comfortable. It will have wrought much more that was negative than positive. But providing us the collective opportunity to embrace remote working and master the holding of hearings and meetings without everyone needing to gather at the courthouse are among the few benefits our profession has been able to derive from this plague on all our houses. Oh. And also seeing handshaking relegated to cultural anthropology textbooks and their virtual equivalents.

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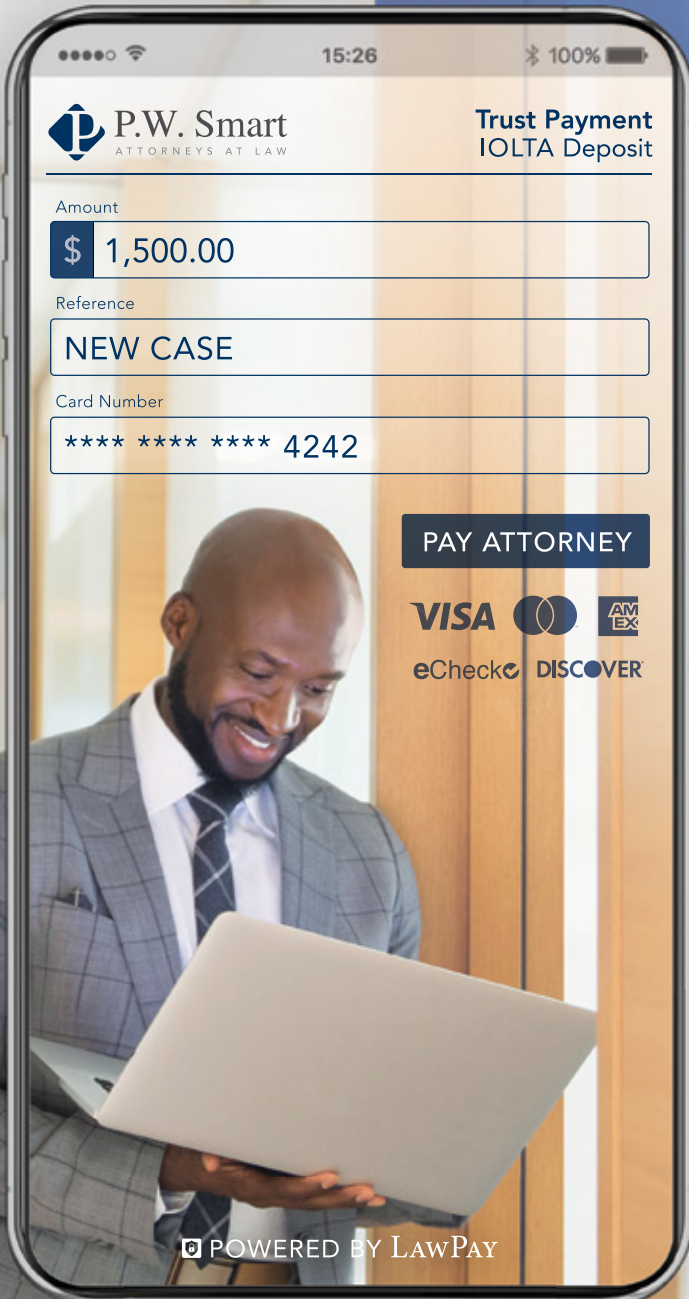
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Advancing the Cause of Truth and Civility: The Twin Responsibilities of Every Attorney at Law

by Gregory N. Hoole

While serving as a Navy judge advocate in Washington, D.C., I was assigned to represent a senior officer who had made some mistakes and was facing a court-martial. In the Navy, prosecutorial power and discretion are vested solely in one's commanding officer. In this case, my client's commanding officer was the Commandant, Naval District Washington himself, an admiral with many years of Navy service and experience.

The evidence against my client was clear-cut and uncontested by my client. This did not leave us with a lot of options for his defense. The best angle I could think of taking was to somehow leverage my client's stellar career and the fact that his case had garnered the attention of some in Congress. The plan was to try to arrange an audience with the admiral and plead for him to give my client a second chance. This is what is known in technical parlance as the "please, pretty please" defense.

Working with the Commandant's staff judge advocate, I was able to arrange for an audience. The appointed day and time arrived, and I was shown into a spacious office on the grounds of the Washington Navy Yard, situated just blocks from the Capitol building. The admiral listened patiently as I stood before him, pleading my client's case. When I finished, the admiral looked at me and declared, "Lieutenant, I'm from Missouri. Do you know what that means?" I stood there in my Navy whites thinking, "You're from Missouri? *Am I supposed to know what that means?*" Then, I began to sweat. Finally, I confessed, "No, sir, I don't know what that means."

The admiral explained: "Missouri is the 'Show Me' state." "Talk is cheap," he said, "I want to see action." He went on to say that I had convinced him to stay the court-martial *temporarily*, but only my client's conduct over the next several months would determine whether the charges against him would ultimately be dropped.

The admiral's demand to "show me" has application to the twin responsibilities every attorney has not just to our profession but to our country: to advance the cause of truth and civility. This

article will take each of these responsibilities in turn. The article will then be continued to the next issue of the *Utah Bar Journal*, where it will conclude with offering some practical suggestions from the members of the Utah Supreme Court on how we can better foster civility and therefore the cause of truth as attorneys and, more broadly, as fellow citizens.

The Cause of Truth

On January 6, 2021, we all witnessed a spectacle that most of us would never have believed could happen in the United States of America. Hundreds of rioters and insurrectionists, some armed with pipes, shields, body armor, plastic ties or "flex cuffs" (commonly used to handcuff large numbers of people), and other weapons, stormed the U.S. Capitol in pursuit of lawmakers in an attempt to prevent Congress from certifying a presidential election.

Shortly before having to be whisked out of the Senate chamber by Capitol police for his own safety, the Senate majority leader, Mitch McConnell, stood on the Senate floor to talk about truth. "Self-government," Mr. McConnell proclaimed, "requires a shared commitment to the truth." 167 CONG. REC. S14 (daily ed. Jan. 6, 2021) (statement of Sen. McConnell). He continued: "We cannot keep drifting apart into two separate tribes with a separate set of facts and separate realities with nothing in common except hostility towards each other and mistrust for the few national institutions that we all still share." *Id.*

Just two days before, Governor Spencer Cox used the occasion of

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his inaugural address also to talk about truth: “[A]t a time when we have more knowledge at our fingertips than any generation in history, we have somehow become more susceptible to disinformation, conspiracy theories, and lies as too often we all struggle to find accurate sources of truth and unbiased information.” Spencer Cox, Inaugural Address (Jan. 4, 2021), *transcript available at* https://docs.google.com/document/d/12n1HHAMW7t5-8RamgiluXKyKbt_JvrZWjXz91n-c/edit.

Senator McConnell, Governor Cox, and the many others who have spoken out about truth, have good cause to be concerned. We are living in a time that has been described as the post-truth era. Post-truth describes a condition where truth is no longer established on shared objective standards but on subjective beliefs and “alternative facts” devoid of any evidentiary support. Indeed, with alternative facts abounding more and more as of late, the Oxford English Dictionary’s word of the year in 2016 was “post-truth.” OXFORD LANGUAGES, *Word of the Year 2016*, <https://languages.oup.com/word-of-the-year/2016/> (last visited Feb. 1, 2021).

Foremost among the reasons why this trend should concern us is that it is incompatible with freedom. Just as courts of law must operate on the basis of evidence, so too must a democratic society operate on the basis of evidence. Indeed, a free, democratic society can function in no other way. As has long been recognized, democracy depends on an informed citizenry. In addition to Thomas Jefferson’s well-known writings on this subject,¹ Ulysses S. Grant, perhaps our country’s most underrated president, opined that the relevant dividing line in the country’s future would not be the Mason-Dixon line but the line separating intelligence and patriotism on the one hand and superstition and ignorance on the other. Ron Chernow, *Grant* 811 (2017).

If democracy depends on an informed citizenry, then an informed citizenry depends on a collective commitment to truth. Herein lies an attorney’s first responsibility, which we each have accepted by oath. Each of us has sworn to “support, obey and defend the Constitution of the United States and the Constitution of Utah” and to “discharge [our] duties of attorney and counselor at law as an officer of the courts of this State with *honesty, fidelity, professionalism, and civility*.” Utah R. Pro. Conduct Preamble (emphasis added). There is no better way we can support, obey, and defend the Constitution and conduct ourselves with honesty and fidelity as officers of the court than through an unwavering commitment to the cause of truth.

We can do this first and foremost by adopting the admiral’s creed to “show me.” If there is any group that should insist on

proof, it is attorneys. We are trained not to accept bald allegations but to rely only on facts supported by evidence. Courts could never form reliable opinions on the basis of unsupported assertions, conjecture, and subjective beliefs, and neither should we. Anytime we read or hear something, we should be in the habit of always asking ourselves, “Is there reliable evidence to support this?” When a friend or associate says something that does not pass the “smell test,” we can set the example of honest inquiry by asking respectfully and sincerely what the source of the information is.

In the same vein, we can set the example of doing no harm by never passing along “news” until we know that it is based in fact. This is especially important in the age of social media, where each of us has the ability to publish our opinions to the world. This, in turn, underscores the importance of ensuring that we obtain our information only from reliable sources.

Online news sources, particularly social media, pose a singular threat in this regard, as much of what is posted comes from unreliable and unaccountable sources. Even news sources that would not go so far as intentionally steering public opinion with untruths are often not above the temptation of increasing revenues by exploiting confirmation bias with targeted news feeds that ensure we see only stories that reinforce our

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preexisting beliefs and opinions.

Our commitment to truth must be paramount. However much passion we may feel about a particular cause, however much loyalty we may feel for a particular political party, however much interest we may have in a particular policy, we must always be willing to subordinate those interests to the cause of truth. The ends never justify the means, especially when the means will ultimately rot the fabric of the Republic on which we rely for the ends.

In short, attorneys can do much to stem the tide of alternative facts and false narratives simply by refusing to accept at face value all we read and hear and instead insisting, “Show me.” As the only private profession that swears to support, obey, and defend the Constitution, and one that is trained to rely only on credible evidence, we are uniquely responsible and uniquely positioned to lead out in this manner for the sake of our nation and our freedom.

Civility

We cannot advocate the cause of truth very far without being likewise committed to the cause of civility. A commitment to one engenders a natural commitment to the other. Likewise, disregard of one naturally quenches a commitment to the other. For example, when we hold in contempt those who disagree with us, it is all too easy to fall prey to unsupported facts and false narratives simply because they refute those we vilify. At the same time, the more we imbibe unsupported facts and false narratives, the more difficult it becomes to understand that someone could legitimately hold a different point of view. Soon, we run the risk of coming to see those with whom we disagree not as just being wrong but as being evil in one sense or another.

Attorneys are duty-bound to resist this. Just as we take an oath to carry out our responsibilities with honesty and fidelity, we also swear to act with “professionalism, and civility.” It says much about what our commitment should be to these two interrelated precepts that the only four words used in the oath to describe the manner in which we should conduct ourselves relate either to truth or civility.

The importance of our role in this regard cannot be overstated. “If destruction be our lot,” Abraham Lincoln famously warned, “we must ourselves be its author and finisher.” Abraham Lincoln, Lyceum Address (Jan. 27, 1838). As one U.S. Senator has written in a compelling book on this topic, “[c]ivil discord has always been the gravest threat to America’s security,” the question being “whether the Republic could long endure if the house was divided internally.” Ben Sasse, *Them: Why We Hate*

Each Other – and How to Heal 248 & 137 (2018).

In his Farewell Address, George Washington was the first to raise a voice of warning about the perils of disunion. “It is of infinite moment,” Washington exhorted, “that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity.” George Washington, Farewell Address (Sept. 19, 1796). Succumbing to political faction, Washington cautioned, “may now and then answer popular ends,” but would “in the course of time and things,” enable “cunning, ambitious, and unprincipled men” to “subvert the power of the people, and to usurp for themselves the reins of government.” *Id.*

In remarkably prescient manner, Washington then warned his fellow Americans “in the most solemn manner” against the “baneful” effects of the “spirit of party,” which spirit “agitates the Community with ill-founded jealousies and false alarms; kindles the animosity of one part against another,” and “foments occasionally riot and insurrection.” *Id.*

It must be emphasized that the unity urged here is not necessarily of opinion. As noted by Judge Thomas B. Griffith (retired) of the United States Court of Appeals for the District of Columbia Circuit, “[t]he Constitution’s form of government not only allows spirited disagreement, it requires it. But the Constitution cannot withstand a citizenry whose debates are filled with contempt for one another.” Thomas B. Griffith, *Civic Charity and the Constitution*, 43 HARV. J. L. & PUB. POL’Y 633, 641 (2020). Thus, the unity sought for is one of commitment to our founding principles, a commitment that is fostered by civil discourse, and one that, in turn, engenders bonds of affection among those engaged in freedom’s cause.

The importance of civility to the perpetuation of our freedom is so great that it caused one nineteenth-century observer to lament the decrease in civility that occasioned the cessation of the practice of dueling. As recorded by author Doris Kearns Goodwin:

Charles Gibson maintained that as wicked as the [dueling] code was, the vulgar public behavior following the demise of the practice was worse still. “The code preserved a dignity, justice and decorum that have since been lost,” he argued, “to the great detriment of the professions, the public and the government. The present generation will think me barbarous but I believe that some lives lost in protecting the tone of the bar and the press, on which the

Republic itself so largely depends, are well spent.”

Doris Kearns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* 65 (2006).

If the country’s collective commitment to civility has steadily decreased since the nineteenth century, it has begun to plummet in the age of alternative facts and fake news. Several former social media investors and executives have begun to sound the alarm about the algorithms used by social media that result in everyone seeing a different version of the news based on their political and personal preferences. Michael V. Hayden, *The Assault on Intelligence: American National Security in the Age of Lies* 222–23 (2018); *The Social Dilemma* (Netflix 2020).

Michael Haydn, a retired United States Air Force four-star general and former Director of the National Security Agency, and former Director of the Central Intelligence Agency, writes in his book about the post-truth era’s impact on national security that social media’s algorithms specifically focus on negative, sensational stories, which are more apt to capture our attention, further entrenching our views and making it nearly impossible for us to understand another’s point of view. Hayden, *The Assault on Intelligence* 222–23. General Haydn explains that Russia regularly inundates American social media in an effort to undermine democracy by sowing discord. Although sometimes Russia is attempting to influence a particular policy or election, it most often is simply trying to divide America, “playing both sides of the issue” with the aim of “pushing America to the extremes to both distract and weaken it.” *Id.* at 234–36.

Most alarming is a dire prediction quoted by Judge Griffith in his article *Civic Charity and the Constitution* referenced above. In his article, Judge Griffith discusses the threat posed by today’s political tribalism and quotes New York University’s Professor Jonathan Haidt, as follows: “[T]here is a very good chance that in the next 30 years we will have a catastrophic failure of our democracy.” Griffith, 43 HARV. J. OF L. & PUB. POL’Y at 634. The reason for his concern, Judge Griffith queries? “We just don’t know what a democracy looks like when you drain all the trust out of the system.” *Id.*

The good news, as Governor Cox noted in his inaugural address, is that it is not too late to fix this. Quoting the formula prescribed by Judge Griffith in another article on this topic, the Governor urged:

[I]f the Constitution of the United States as we know it is to survive, . . . then we must inculcate the virtue of civic charity. We must seek to understand one

another, to treat each other not as enemies but as friends and to secure justice for all without demonizing and ostracizing those with whom we disagree.

Spencer Cox, Inaugural Address (Jan. 4, 2021), *quoting* Thomas B. Griffith, *The Degradation of Civic Charity*, 134 HARV. L. REV. F. 119, 120.

As reflected in the Navy admiral’s demand, however, some things are more easily said than done. In the spirit of “show me,” this article will continue to the next issue of the *Utah Bar Journal*, in which members of the Utah Supreme Court will offer practical suggestions, short of reinstituting the practice of dueling, that each of us can implement to promote a greater degree of civility and commitment to truth in our practice of law and our public discourse.

It may not be easy, but our country’s future likely depends on it. The world is watching to see if America will continue to be, as Abraham Lincoln described her, “the last best hope of earth.” Abraham Lincoln, Annual Message to Congress: Concluding Remarks (Dec. 1, 1862). Given our sworn obligation to support, obey, and defend the Constitution, coupled with our legal training, there is no one better than attorneys to lead out in this critical cause.

1. Letter from Thomas Jefferson to Richard Price (Jan. 8, 1789), *available at* <https://www.loc.gov/exhibits/jefferson/60.html>.

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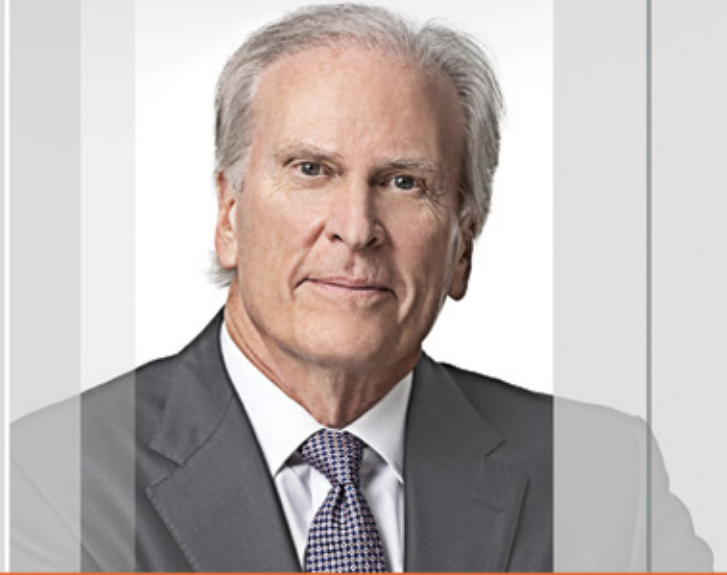
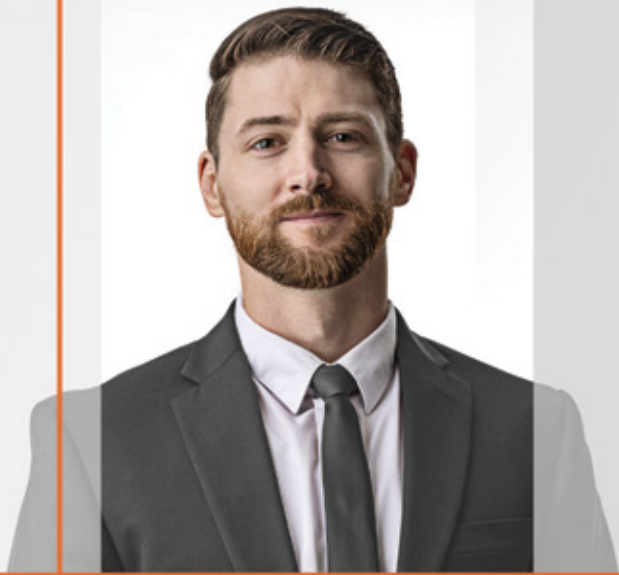
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The Road to Solutions: Systemic Racism and Implicit Bias in Prosecution

by Margaret Olson and Ivy Telles

This article explores an uncomfortable topic. Not least among the incredible events of 2020, our country and our state saw an outpouring of outrage, protest, and even violence in the aftermath of the murder of George Floyd, Ahmaud Arbery, Breonna Taylor, and others. The undersigned authors, like many, tried to stay quiet and do some listening. To understand. To rethink all we previously believed and open the commonly accepted narrative to new information and perspectives. We have endeavored to listen with humility to the pain, suffering, and loss our communities of color continue to endure.

It's easy to resort to defensiveness. To be a racist is a bad thing. No one wants to think of him or herself as a racist. We throw up the usual defense mechanisms: *I was raised better than that. I have BIPOC friends. I don't see color.* Now, we humbly attempt to set these impulses aside and start down a difficult road to solutions.

As prosecutors, we believe we have both an opportunity and a responsibility to start this conversation and shine light on the criminal justice system's role in these problems. We must name it. We must identify areas in which prosecutors are part of the problem. As professionals who have devoted our careers to the criminal justice system, we must be willing to examine our current and historical roles in institutionalized racism, not rush to justify them. We offer the following thoughts about how prosecutors can be part of the solution in this dawning era.

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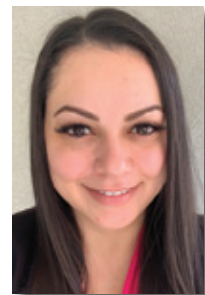
First, we must acknowledge and combat unconscious bias within ourselves. What are our implicit biases? What experiences have we had with people that have influenced how we see, react, respond, or deal with a situation? What is our mindset? How are we approaching the day?

Second, have we, as prosecutors, failed to challenge a judge, police officer, or co-worker for fear of risking the relationship? Have we failed to follow up invidious examples of bias and discrimination because we were not personally involved? How many missed opportunities for training and meaningful discussion have been lost because we mind our own business and “stay in our lane”? How many times have we failed to critically examine new information presented by defense counsel because [fill in 100 reasons here]. Have we sat, silent, at counsel table while an unrepresented person of color was treated differently?

These are hard questions, but we must ask them. We must reflect upon and take responsibility for our honest answers. We must commit to heightened standards for ourselves, now.

Third, we must combat institutional racism inside a broken system. We need to be ready to have the uncomfortable and potentially ugly conversations with our partners in the justice system, identify where the system is failing and what actions we can take to counter those failures. One crucial component in

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this is to better fund indigent criminal defense. Our able opponents on the other side of the courtroom should have comparable salaries, benefits, job security, and investigator/expert resources as we prosecutors do. Next, we must actively cultivate more diversity in prosecutor offices. Law school admissions deans and the legal community should encourage this as well. An informal canvas of this state's prosecutors reveals very few persons of color working as prosecutors and almost none in positions of leadership in the prosecution community. The same observation goes for Utah's judiciary. It is no wonder people of color are distrustful of a system that has, despite lofty ideals, failed to serve or represent entire communities and demographics. Very few attorneys administering justice understand or empathize with the harsh reality communities of color face upon entering the justice system. We must commit to fulfill the ideal of Justice For All, now.

Fourth, we need to create a safe space in the courtroom for raising these real issues. Everyone in the courtroom should be free to be anti-racist, not "color blind," and to shine a light on unconscious bias or racial inequities without the fear of backlash. Raising fundamental fairness issues must be normalized in our profession. Instead of meeting such difficult moments with defensiveness and denial, let us learn to pause, reflect, and course correct. We must commit to a better standard of being open and direct on this issue, now.

Lastly, we need to look outward. Justice is bigger than the single dimension of prosecution. It will take more than what prosecutors can do alone. We need our local and state governments, law enforcement agencies, partners in defense, and many other social services to help battle the systemic issues and racial disparities we see in the justice system. When truly seeking justice, prosecutors and defense attorneys are not inherently at odds. Justice comes in many different forms and always must be considered on a case-by-case basis. A prosecutor's job is not to convict. We are ministers of justice and protectors of the community: the whole community. We as prosecutors should be looking for racial disparities at every stage of a case. We should confront law enforcement officers with apparent prejudices and biases when we see them. If, upon case review, a citizen's constitutional rights have been violated, prosecutors must decline to file, explain why, conduct further training, and close the loop with command staff. When law enforcement officers fail to police themselves on issues of race, the next line of

defense is prosecutors. When we fail, we leave it to defense attorneys, who already have a difficult job in the many roles they play for their clients. We add to their workload by failing to do our part in screening out bad stops and searches and cases that hint towards racial bias. We must commit to a better standard of prosecution, now.

Summit County is small (~41,000 residents). Our prosecution team is very close and committed to excellence. We have not had any officer involved critical incidents during our tenure and have not experienced large scale race-based conflict, but this is in large part because we do not have large minority populations (.7% African American and an admittedly underreported 12.4% Hispanic). Our law enforcement partners are among the finest and most professional in the country and we are proud to say that they are committed to doing the hard work of embarking on this journey of critical self-examination with us. As enforcers of the law, we must partner with law enforcement to recognize this movement as an opportunity for training and improvement. We recognize now more than ever that we must work harder to level the field when it comes to racial disparities in our justice system the same way our office has endeavored to level the field with the wealth and power disparities in the justice system. While our office prides itself on "taking out its own trash," and not filing cases in which there are obvious evidentiary problems, unlawful stops, or illegal searches, we recognize that there is room for improvement. We will examine all use-of-force cases with heightened scrutiny prior to filing. We have instructed our office paralegals not to enter the race of any suspect, witness, or complainant until after a case is closed, and only then for data-gathering purposes. Since this national racial reckoning began, our office has canvassed our own prior case dispositions to account for unconscious bias, potential police misconduct, and racial injustice. It cannot be a task that will be completed quickly if we are to undertake this issue with the seriousness that the moment demands. As we continue to listen and grow in understanding, our office commits to redefining equity and justice in America.

We are here to get it right, not to be right. We commit to listening and to being part of the accountability and change America has so long needed and for which communities of color have so long been deprived. We invite our fellow prosecutors (and fellow lawyers) to join this commitment.



Emily Adams



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Appellate Highlights

by Rodney R. Parker, Dani Cepernich, Robert Cummings, Nathanael Mitchell, Adam Pace, and Andrew Roth

EDITOR'S NOTE: *The following appellate cases of interest were recently decided by the Utah Supreme Court, Utah Court of Appeals, and United States Tenth Circuit Court of Appeals. The following summaries have been prepared by the authoring attorneys listed above, who are solely responsible for their content.*

UTAH COURT OF APPEALS

State v. Wilkerson **2020 UT App 160 (Nov. 27, 2020)**

In this appeal from a restitution order requiring the criminal defendant to pay roughly \$2,000 to Utah County for his pre-plea detention in the Utah County Jail, the Utah Court of Appeals held **that the Pay-to-Stay Statute, Utah Code § 76-3-201(6), applies even if the incarceration was served prior to conviction or prior to sentencing.**

State v. Gallegos **2020 UT App 162 (Dec. 10, 2020)**

After a shank was found in the cell he shared with another prisoner, Gallegos was tried and convicted for felony possession of a dangerous weapon. On appeal, Gallegos challenged the admission of evidence showing he previously possessed a nearly identical shank as forbidden propensity evidence under Utah R. Evid. 404(b)(1). Despite a line of Utah cases suggesting that evidence of prior possession of similar contraband by the defendant is a relevant factor indicating constructive possession, the court of appeals agreed with Gallegos and reversed. The court held that **evidence of prior possession of similar contraband by the defendant is admissible to show constructive possession only if the proponent can offer some non-propensity purpose under Rule 404(b)(2).**

UDAK Properties LLC v. Canyon Creek Commercial Center LLC **2020 UT App 163 (Dec. 10, 2020)**

UDAK Properties LLC v. Spanish Fork, UT Realty LLC **2020 UT App 164 (Dec. 10, 2020)**

The court affirmed the district court's grant of declaratory relief and attorney fees to UDAK in these two related appeals, concluding that UDAK unambiguously qualified as a "Responsible Owner" as

that term is used in restrictive covenants binding owners of parcels in a shopping center. The court held that **the defendants' objections to the award of attorney fees were unpreserved because they failed to file an objection to UDAK's affidavit of fees within seven days as required by Utah R. Civ. P. 73(d).** The court further held that **a defendant's filing of a photocopy of a check that it never delivered was not a valid tender of money judgment under Utah Code § 78B-5-802 because it was not an "actual production" of the money.**

Medina v. Jeff Dumas Concrete Construction LLC **2020 UT App 166 (Dec. 17, 2020)**

The plaintiff asserted that his former employer wrongfully terminated him in violation of public policy for asserting a workers' compensation claim. The district court granted summary judgment in favor of the employer. As a matter of first impression, the court of appeals addressed the standard for the substantial factor prong under the wrongful termination burden-shifting framework and held that **an employer's direction to leave the job site if injured, evidence that the employer believed that the employee fabricated his injuries, and the fact the termination occurred during the employee's deposition in the workers' compensation case were sufficient circumstantial evidence to survive summary judgment under the substantial-factor test.** The court of appeals also rejected the employer's argument that a temporal disconnect severed the causal connection.

Zion Village Resort LLC v. Pro Curb U.S.A. LLC **2020 UT App 167 (Dec. 17, 2020)**

In a combined appeal involving petitions to nullify two sets of construction liens on a condominium project, the court of appeals reversed the district court's decision granting a petition to nullify one lien and affirmed the other. On an issue of first

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impression, the court held that **in an expedited proceeding to nullify a construction lien, if the district court does not hear live testimony, the applicable standard of review is correctness with no deference afforded to the district court's decision.**

***R4 Constructors LLC v. Inbalance Yoga Corp.*
2020 UT App 169 (Dec. 24, 2020)**

The court held that the nonrecovery provision of Utah Code § 58-55-604 (which limits a non-licensed contractor's ability to sue) **1) creates an affirmative obligation of the plaintiff which is not a waivable affirmative defense; and 2) allows unlicensed contractors to sue even if they are out of compliance with the statute, so long as they can demonstrate that a common law exception to the statute applies.** The court also affirmed the district court's denial of a motion to extend expert discovery deadlines, holding that it would presume that the court had a reasonable basis for its decision because the appellant failed to include a transcript of the hearing in the record on appeal.

***Miller v. Miller*
2020 UT App 171 (Dec. 24, 2020)**

In this divorce, the district court dismissed a petition to modify for both failure to state a claim and failure to employ dispute resolution procedures. The court of appeals reversed the Rule 12(b)(6) dismissal on the basis that the lower court abused its discretion by weighing change-in-circumstance evidence. Additionally, the court of appeals held that the district court erred in dismissing the petition for failure to engage in the dispute resolution process, where the issue was raised sua sponte by the court during a hearing without notice or an adequate opportunity to prepare for or brief the issue.

TENTH CIRCUIT

***Schreiber v. Cuccinelli*
981 F.3d 766 (10th Cir. Nov. 24, 2020)**

In this case, the Tenth Circuit addressed the issue of whether an adopted child could be a "legitimated" child under § 101(b)(1)(C) of the Immigration and Nationality Act. The Act expressly applies to children "adopted while under the age of sixteen years," but the child here was adopted at seventeen. The petitioner argued that Kansas law considered adopted children "legitimated." The Tenth Circuit held that while state law may

apply in determining how a parent may legitimate a child, the Board of Immigration Appeals did not err in interpreting the Act's unambiguous plain language to mean that state law is inapplicable to determining whom a parent may legitimate, ultimately holding that § 101(b)(1)(C) does not apply to adopted children.

***United States v. Silva*
981 F.3d 794 (10th Cir. Nov. 24, 2020)**

On appeal from his sentencing for possession of a firearm by a restricted person, Silva challenged the trial court's reliance on a twelve-year-old assault conviction to treat him as a "career offender" and substantially enhance his sentence. On plain-error review, the Tenth Circuit reversed and remanded for resentencing, holding that the assault conviction could not form the basis of a "career offender" sentencing enhancement because it was too old to merit consideration under the federal sentencing guidelines independently.

***Crowson v. Washington County*
983 F.3d 1166 (10th Cir. Dec. 29, 2020)**

In this interlocutory appeal, the Tenth Circuit addressed the scope of pendent appellate jurisdiction and the circumstances in which a claim under 42 U.S.C. § 1983 can be maintained against a municipality without establishing a violation of the plaintiff's constitutional rights by an employee of the municipality. The Tenth Circuit clarified that in most cases, "the question of whether a municipality is liable [is] dependent on whether a specific municipal officer violated an individual's constitutional rights," but that there is an exception where "the municipal policy devolves responsibility across multiple officers" and "the sum of multiple officers' actions taken pursuant to municipal policy results in a constitutional violation."

***Hooks v. Atoki*
983 F.3d 1193 (10th Cir. Dec. 29, 2020)**

In this civil rights lawsuit, an inmate alleged that the defendant police officers used excessive force during his arrest and that correction officers were deliberately indifferent to a jail-house beating he suffered. The court applied a subjective intent standard to the deliberate indifference claim, holding that no reasonable jury could conclude that the officers acted unreasonably in responding to the attack within twenty-eight seconds.

Four-Year Limitations Period Against Attorneys? Perhaps No Longer.

by Jeremy Speckhals

During the summer of 2019, the Utah Supreme Court issued three rulings that all Utah attorneys should be aware of. These cases have the practical impact of extending the four-year statute of limitations applicable to malpractice actions against attorneys. This practical extension also has implications for attorneys' malpractice insurance needs. Attorneys of any discipline should take note. Indeed, these cases may affect any litigator in Utah – regardless of what substantive area of law the litigator practices in.

The Utah Supreme Court first issued *Thomas v. Hillyard*, 2019 UT 29, 445 P.3d 521. There, a jury convicted a criminal defendant of two felonies. *Id.* ¶ 3. The client was then able to secure a new trial after hiring new counsel. *Id.* ¶ 1. “He then accepted a plea deal in which he achieved a better result than he had received at trial – replacing two felony convictions with three misdemeanor convictions.” *Id.* He later sued his trial counsel for malpractice. *Id.* ¶ 5.

Trial counsel moved for summary judgment, arguing the client's claim was time-barred because he filed it more than four years after the jury returned its guilty verdict. *Id.* ¶ 2. The client countered that “the element of causation could not be proven until he received a more favorable result, which happened when he accepted the plea deal.” *Id.* The supreme court sided with the client, holding “that a malpractice claim does not accrue until the underlying direct action has concluded and there is no appeal of right available. Once there is no appeal of right available, the harm is sufficiently final.” *Id.* ¶ 20. In reaching this conclusion, the court rejected trial counsel's arguments that a criminal malpractice plaintiff must (1) establish that he was actually innocent, or (2) show that he was entitled to post-conviction relief to prevail on his malpractice claim. *See id.* ¶ 14.

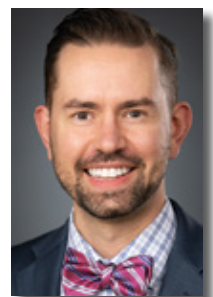
The court built on that holding in *Paxman v. King*, 2019 UT 37, 448 P.3d 1199. In *Paxman*, an optometrist pleaded guilty to charges under the Fraudulent Insurance Act and the False Claims Act on

the advice of counsel. *Id.* ¶ 1. He was then placed on a “federal exclusion list, which prevented him from participating in federal health care programs and billing a number of insurance companies.” *Id.* The client completed probation, and his charges “were reduced from third-degree felonies to Class A misdemeanors.” *Id.* ¶ 2. He later sued his attorney for malpractice, alleging the attorney “failed to inform him of the consequences of pleading guilty or to advise him of the likelihood of success at trial.” *Id.*

As in *Hillyard*, the attorney moved for summary judgment, contending the client needed to prove he was actually innocent or that he was entitled to post-conviction relief to prove his malpractice claim. *Id.* ¶ 3. The supreme court reaffirmed *Hillyard's* conclusion that a client need not establish actual innocence or show that he was entitled to post-conviction relief to proceed on a malpractice claim. *See id.* ¶¶ 8–14.

Finally, the court extended *Hillyard* to a civil malpractice claim in *Mosbier v. Fisher*, 2019 UT 46, 449 P.3d 145. There, the clients hired an attorney, and the attorney succeeded in obtaining a large judgment. *Id.* ¶ 2. The party against whom the judgment was obtained filed for bankruptcy, and the clients again hired the same attorney to pursue the judgment in subsequent bankruptcy proceedings. *Id.* ¶ 3. The attorney failed to file a claim for nondischargeability by the required date, informed the clients of his failure, and further explained that he had filed a claim with his malpractice insurance company. *Id.* ¶ 4. The clients then hired a separate attorney to sue the first attorney for malpractice. *Id.* ¶ 5.

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The first attorney contended the second attorney's suit was time-barred, as it was filed more than four-years after the first attorney missed the nondischargeability filing deadline. *Id.* ¶¶ 5, 7. As in *Hillyard* and *Paxman*, the supreme court sided with the clients, concluding that "the damages and harm were sufficiently final when the bankruptcy court confirmed the final bankruptcy plan, and...the claim therefore accrued on that date," thereby rejecting the first attorney's argument that the claim accrued when he missed the nondischargeability filing deadline. *Id.* ¶ 11.

While these cases concerned the substantive practice areas of criminal law and bankruptcy law, attorneys of all disciplines should pay close attention to these holdings. As the court held in *Hillyard*, "a malpractice claim does not accrue until the underlying direct action has concluded and there is no appeal

of right available." *Thomas v. Hillyard*, 2019 UT 29, ¶ 20, 445 P.3d 521. The *Hillyard* court offered no limitation on what type of discipline the holding applies to. Instead, the court broadly spoke of "malpractice claim[s]." *See id.* Further, nothing stopped the *Moshier* court from relying on the holding from *Hillyard*. *See Moshier*, 2019 UT 46, ¶¶ 8–9, 11 (applying the holding of *Hillyard* to bankruptcy facts). The *Moshier* court comfortably applied the malpractice accrual concepts from *Hillyard*. Nothing in any of these three cases suggests that the supreme court would apply some other accrual concept depending on the substantive practice area. Instead, these principles appear to apply no matter the specific discipline. Thus, all attorneys should take note.

These cases also show that there is no one-size-fits-all approach to accrual. When an action (1) "concludes" and (2) "there is no

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appeal of right available,” *Hillyard*, 2019 UT 29, ¶ 20, can vary significantly depending on the practice area, potentially extending the filing timeline for a legal malpractice action well beyond four years, *see* Utah Code Ann. § 78B-2-307(3) (“An action may be brought within four years...for relief not otherwise provided for by law.”). *Hillyard* concerned the interaction of legal malpractice stemming from criminal representation and the Post-Conviction Remedies Act (the PCRA). The accrual period there hinged largely upon the intricacies of the PCRA. *See Hillyard*, 2019 UT 29, ¶ 22. *Moshier*, in contrast, hinged on bankruptcy law. 2019 UT 46, ¶ 11. These cases serve as examples that accrual principles can vary significantly depending on the practice area. Your particular practice area may have its own intricacies that could further complicate when a potential claim accrues.

While these cases differ on the facts and substantive law, they both serve as potent examples that the four-year statute of limitations may be effective only in theory. For instance, in *Hillyard* the jury returned its guilty verdict in 2012, and the client’s malpractice claim brought in 2017 was timely. 2019 UT 29, ¶¶ 2–3, 5. Similarly, in *Moshier* the attorney missed the nondischargeability filing deadline in 2010, and the clients’ malpractice claim brought in 2015 was timely. 2019 UT 46, ¶¶ 5, 7. A clever law school professor could undoubtedly create myriad hypotheticals where the legal malpractice filing deadline could be extended well beyond four years based on the foregoing cases.

The practical impact of these cases is twofold. First, Utah attorneys can no longer realistically rely on the four-year statute of limitations.

The legal malpractice filing deadline can be extended well beyond four years. Attorneys will need to look over their shoulders for longer than they might have realized, especially when appeals are involved.

Second, and perhaps more pragmatically, Utah attorneys would do well to revisit their insurance needs. Most professional liability policies are claims-made policies. Claims-made policies mandate that the insured notify the carrier of a claim or a potential claim. If the attorney fails to notify the carrier about a claim or potential claim, the attorney risks non-coverage. Claims-made policies are triggered on the act of making a claim rather than the occurrence itself. The holdings of these cases mean that a claim may be made further along in time than the four-year statute of limitations suggests. Practical attorneys should monitor cases they are involved in, especially if those cases involve lengthy appeals, to ensure they do not neglect to abide by their reporting requirements.

This also applies to reapplying for coverage. Most professional malpractice policies exclude claims that predate the effective policy date. Failure to properly report a claim or potential claim could impact insurance renewals. These holdings have the practical impact of extending the time for when potential claims might arise.

Finally, these cases will also have the practical impact of affecting tail and prior acts coverage. Most professional malpractice policies are claims-made policies that do not provide coverage after the policy expires. These cases could extend the potential deadline of a claim, which deadline could also extend beyond a policy period. Attorneys should consider purchasing tail coverage to account for these potential extensions. Tail coverage, also called an extended reporting endorsement, provides coverage for after an attorney becomes inactive. While it may be painful to envision the first steps towards retirement as consisting of looking over your shoulder for an extended period of time, it is better to invest in a tail policy than risk a significant judgment after the four-year statute of limitations may have expired.

Prior acts coverage may be worth a second look. Most policies will restrict coverage for claims that arose prior to the policy’s inception date. Depending on your firm’s needs, these cases may warrant purchasing additional prior acts coverage to provide additional peace of mind.

Before these cases, the operative statute of limitations for malpractice claims against attorneys was four years. For better or for worse, these cases have effectively extended that limitations period. Attorneys of all specialties should take heed – especially when considering their insurance needs.



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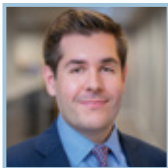
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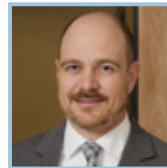
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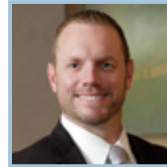
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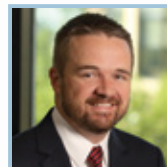
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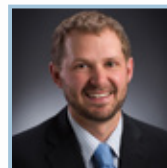
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Do You See What I See?

The Science Behind Utah Rule of Evidence 617

by Louisa M. A. Heiny

In late 1983, a ten-year-old boy named David was kidnapped and raped in Tucson, Arizona. *Arizona v. Youngblood*, 488 U.S. 51, 52 (1988). At the hospital on the night of the assault, he described his attacker as a black man with one bad eye. He worked with a police sketch artist and later identified his attacker on four different occasions. He identified the defendant twice in successive photo lineups, once in a courthouse hallway while waiting for a preliminary hearing, and twice in consecutive trials. The child's repeated and consistent identification of his attacker was – like most eyewitness identifications – incredibly persuasive to the jury. It was also – like some eyewitness identifications – absolutely wrong. Eighteen years after the attack, surviving DNA evidence showed that the perpetrator was not the man convicted of the crime but rather a serial rapist serving time in a Texas state prison. See Louisa M. A. Heiny & Amos N. Guiora, *Arizona v. Youngblood* (Deep Dive Series) (forthcoming 2022).

Eyewitness identifications play a key role in many investigations and are often central to a prosecutor's case. As Justice Brennan recognized more than forty years ago, “[T]here is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says ‘That’s the one!’” *Watkins v. Sowders*, 449 U.S. 341, 352 (1981) (Brennan, J., dissenting) (emphasis omitted) (quoting E. Loftus, *Eyewitness Testimony* 19 (1979)).

At the same time, eyewitness identifications can be tainted, accidentally or purposely, thus tainting the justice system as well. According to the Innocence Project, mistaken eyewitness identifications contributed to about 69% of wrongful convictions in the United States overturned by exculpatory DNA evidence. Alexis Agathocleous, *How Eyewitness Misidentification Can Send Innocent People to Prison*, THE INNOCENCE PROJECT, (Apr. 15, 2020) <https://www.innocenceproject.org/how-eyewitness-misidentification-can-send-innocent-people-to-prison/>.

There are myriad reasons for this phenomenon, but the primary responsibility lies not with the witness who, like David, is doing the best job possible after great trauma. Instead, the fault lies with a system that fails to recognize, and often amplifies, mistakes and assumptions in the identification process.

Prior to 2019, Utah courts used five “reliability” factors to determine the admissibility of eyewitness identifications. The five factors were: (1) the opportunity of the eyewitness to view the suspect; (2) the degree of attention paid to the suspect; (3) the witness’s capacity to observe the event; (4) the degree of spontaneity and consistency of the eyewitness testimony thereafter; and (5) the nature of the event being observed. *State v. Ramirez*, 817 P.2d 774, 781 (Utah 1991). In 2019, however, Utah became an early adopter of a new rule of evidence designed to increase the reliability of eyewitness identifications presented to juries. Utah Rule of Evidence 617 “ensures that when called upon, a trial court will perform a gatekeeping function and will exclude unreliable eyewitness identification evidence in a criminal case.” Utah R. Evid. 617 advisory committee note. The starting point for determinations of eyewitness identification admissibility is now Rule 617. *State v. Lujan*, 2020 UT 5, ¶ 4, 459 P.3d 992.

Rule 617 serves a number of functions. First, it requires that the court exclude evidence if a factfinder “could not reasonably rely on the eyewitness identification.” Utah R. Evid. 617(b). Second, it places the burden on the party challenging the evidence to

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make the necessary showing of unreliability. *Id.* Third, it sets out factors that the court may use in determining reliability, including those that apply in all cases and those that apply specifically to lineups, photo arrays, and showups. *Id.* R. 617(b)–(c). Fourth, it sets parameters for the admission of photographs. *Id.* R. 617(d). Finally, it sets out the role of expert witnesses and jury instructions in helping the court and the jury assess the reliability of eyewitness identifications. *Id.* R. 617(e)–(f). This article examines the factors courts may use in determining reliability, as well as the science underpinning the Rule. An upcoming article will discuss litigation at various trial stages under Rule 617.

EYEWITNESS IDENTIFICATIONS AND ESTIMATOR VARIABLES

In all cases involving challenged eyewitness identifications, courts may consider nine estimator variables. Estimator variables are “factors connected to the event, witness, or perpetrator – items over which the justice system has no control” but which “may affect the reliability of an eyewitness account.” *Lujan*, 2020 UT 5, ¶ 37. They include (among others) the viewing conditions at the time of the event (distance, lighting, etc.), the amount of stress (or duress) the witness was under, whether there was a weapon that the witness focused on, witness characteristics (age, impairment, etc.), perpetrator characteristics (like age and race, given that witnesses are better at identifying persons of their own age and race), and factors affecting memory decay. *Id.*

Thus, Rule 617 directs judges to consider:

- (1) Whether the witness had an adequate opportunity to observe the suspect committing the crime;
- (2) Whether the witness’s level of attention to the suspect committing the crime was impaired because of a weapon or any other distraction;
- (3) Whether the witness had the capacity to observe the suspect committing the crime, including the physical and mental acuity to make the observation;
- (4) Whether the witness was aware a crime was taking place and whether that awareness affected the witness’s ability to perceive, remember, and relate it correctly;
- (5) Whether a difference in race or ethnicity between the witness and suspect affected the identification;
- (6) The length of time that passed between the witness’s original observation and the time the witness identified the suspect;
- (7) Any instance in which the witness either identified or failed to identify the suspect and

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whether this remained consistent thereafter;

(8) Whether the witness was exposed to opinions, photographs, or any other information or influence that may have affected the independence of the witness in making the identification; and

(9) Whether any other aspect of the identification was shown to affect reliability.

Utah R. Evid. 617(b)(1)–(9).

Estimator variables have been extensively researched over the past fifty years by psychologists, law professors, and criminologists. The Utah Supreme Court Advisory Committee on the Rules of Evidence relied heavily on this research in drafting Rule 617. *Id.* R. 617 advisory committee note. The results of this research often run counter to the assumptions of factfinders.

Adequate Opportunity to Observe: Rule 617(b)(1)

Whether a witness has “an adequate opportunity to observe the suspect committing the crime,” *id.* R. 617(b)(1), may depend on fairly obvious factors such as the lighting conditions or length of observation. It may also depend on far more subtle factors such as the direction of the observer’s gaze. Visual acuity is the highest at the observer’s center of gaze. This center is the area that humans use for fine sensing, such as reading or scrutinizing faces in a social context. Acuity drops off markedly with angular distance from this center, as might be the case if a suspect were standing above or below the witness on a set of stairs, and “yields retinal distortions of facial features.” *National Research Council, Identifying the Culprit: Assessing Eyewitness Identification* 56 (2014) [hereinafter *Identifying the Culprit*]. Even a ten-degree change from the center may make a difference. *Id.* at 51. Likewise, viewing conditions may also affect the perception of face, gender, and age. Investigators found that “faces that were physically identical . . . were perceived as unambiguously male or female depending on where they appeared in the observer’s visual field.” *Id.* at 56.

Weapon Focus and Other Distractions: Rule 617(b)(2)

High and low levels of stress may harm performance in identifying suspects, while moderate levels may enhance memory performance. The presence of highly emotional stimuli also has a counter-intuitive influence on a witness’s identification. Many factfinders might assume that the presence of a weapon at the scene would improve the witness’s recall. However, research suggests instead

that a witness’s attention in this scenario “is compellingly drawn to emotionally laden stimuli, such as a gun or a knife, at the expense of acquiring greater visual information about the face of the perpetrator.” *Id.* at 55. The phenomenon of “weapon focus” means that the presence of a weapon at the scene of a crime captures the witness’s visual attention and impedes the witness’s ability to attend to other important features of the visual scene, such as the face of the perpetrator.

Further, humans are not hardwired to look at things that scare us, and thus a stressed victim may encode information differently. Zoom Interview with Dr. Gary L. Wells, Iowa State Univ. (July 21, 2020) [hereinafter Wells Interview]. Stress promotes enduring memory retention and a sense that the witness is “reliving” the event each time he or she repeats the story. These stories, because they are traumatic, are often retold. However, factors such as weapon focus may make the memories inaccurate, and witnesses often fold information learned after the event into their memories. “With each implicit retrieval or explicit telling of a story,” witnesses “may unconsciously smooth over inconsistencies or modify content based on [their] prior beliefs, the accounts of others, or through the lens of new information.” *Identifying the Culprit* at 62. During this process, a witness may also “add embellishments that reflect opinions, emotions, or prejudices rather than observed facts” or “may simply omit disturbing content and pass over fine details.” *Id.* (footnote omitted). These vivid but increasingly inaccurate memories are often “held with high confidence” by the witness. *Id.* at 64–65. “This breakdown of the relationship between accuracy and confidence can obviously undermine eyewitness accounts.” *Id.* at 65.

Awareness That a Crime is Taking Place: Rule 617(b)(4)

Low levels of emotion attending any scene will also have an impact on the accuracy of an eyewitness account. Low levels of stress during the event may mean that details are ignored, as in the classic “Invisible Gorilla” psychology experiment in which viewers are asked to watch a video of a basketball game and count how many times the ball is passed. Roughly half of viewers fail to notice that a man in a gorilla costume walks through the scene. *See* Christopher Chabris & Daniel Simons, *The Invisible Gorilla* 5–6 (2010). “In some cases, unattended content is effectively invisible: It does not reach awareness, it is not perceived, and it is not available . . . for storage in memory.” *Identifying the Culprit* at 53.

Own-Race Bias: Rule 617(b)(5)

The race of both the witness and the suspect plays a significant role in the accuracy of eyewitness identification. “[F]aces of people of races different from that of the eyewitness are harder to discriminate (and thus harder to identify accurately) than are faces of people of the same race as the eyewitness.” *Id.* at 96. This phenomenon, known as “own-race bias,” does not reflect racial animus or bias. Instead it reflects, and is moderated by, the number of close relationships a witness has with people of a different race. It is not, however, moderated by the frequency of contact that a witness has with those of other races. A store clerk, for example, who has daily interaction with people of a variety of races but who has few or no friendships with those of different races may be subject to own-race bias. Wells Interview.

Repeat Identification and Exposure to Information: Rules 617(b)(7) and 617(b)(8)

Rule 617 instructs judges to consider the frequency and consistency with which a witness identifies a suspect. Utah R. Evid. 617(b)(7). While consistent identifications may indicate reliability, repeating an identification over time carries with it at least four dangers. First, it encodes the identified face, rather than the culprit’s face, in the witness’s memory. Interview with Dr. Elizabeth F. Loftus, Univ. of Wash. (June 24, 2020). Second, multiple procedures can create a commitment effect in which the witness recognizes a lineup participant or suspect photo from a previous procedure rather than from the crime scene. Over time, witnesses, who often don’t want to disappoint police or prosecutors, may become concerned about picking the same person at each opportunity rather than picking the right person at each opportunity. Wells Interview. Third, repeat exposure to a suspect may cause a witness to become more confident in his or her identifications, regardless of their accuracy.

Finally, repeat identification procedures also increase the likelihood that the witness will be “exposed to opinions, photographs, or any other information or influence that may have affected the independence of the witness in making the identification,” Utah R. Evid. 617(b)(8), such as accidental or overt confirmation that the witness has made the “correct” choice or exposure to other witnesses and their identifications. “A witness’ inevitable interactions with law enforcement and legal counsel, not to mention communications from journalists, family, and friends, have the potential to significantly modify the witness’ memory of faces encountered and of other event details at the scene of the crime.” *Identifying the Culprit* at 65.

LINEUPS, SHOWUPS, AND SYSTEM VARIABLES

In addition to estimator variables, judges must also grapple with system variables. “System variables consist of factors controlled by the court or law enforcement.” *See State v. Lujan*, 2020 UT 5, ¶ 38, 459 P.3d 992 (emphasis omitted). These include the procedures used during the identification process; the quality of pre-identification instructions; and proper photo array, lineup, or showup construction. *Id.* Rule 617 directs judges to consider a variety of system variables and requires the court to “determine whether the identification procedure was unnecessarily suggestive or conducive to mistaken identification. If so, the eyewitness identification must be excluded unless the court,” considering the best practices for controlling system variables, “finds that there is not a substantial likelihood of misidentification.” Utah R. Evid. 617(c).

Use of Composite Sketches

In some jurisdictions, the first step in the identification procedure is to ask the witness to work with a police sketch artist to create a composite drawing. However, current research has identified three problems with these sketches. First, controlled studies have shown that the actual face of a perpetrator is generally much different than the composite that

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was drawn. Wells Interview. This may be because witnesses have difficulty accurately describing specific features of a face. *Id.* Instead, distinguishing features will stand out and possibly distract from other features. To illustrate this point, think of a person you know well, such as a parent or child, and attempt to describe the shape of that person's nose. Consider the difficulty of repeating that experiment with a person you have seen only briefly and perhaps under less-than-ideal circumstances, such as low lighting. Second, specific questions such as Tell me what you remember about the robber's nose? may lead the witness to try to remember something that the witness doesn't know. *Id.* Allowing a witness to generally tell an investigator what he or she remembers will lead to more accurate information. *Id.* Third, completing a composite tends to lock the drawing into the creator's memory, which can encode a new face in their memory that is different from the actual face. Because this further erodes the reliability of later identifications, such as those that might occur at a pretrial hearing or trial, experts no longer recommend that witnesses create a composite sketch. *Id.*

Best Practices in Photo Arrays and Lineup Procedures: Rule 617(c)(1)–(2)

Photo arrays and lineups provide the government with the ability to control the identification environment. Best practices, designed to generate the most reliable identification, require care in the choice of photographs or participants in the lineup, the manner of presentation, the instructions to witnesses, and the documentation of the witness's response.

Police must, of course, use lineup participants or photos of those “who match the witness's description of the perpetrator and who possess features and characteristics that are reasonably similar to each other, such as gender, race, skin color, facial hair, age, and distinctive physical features.” Utah R. Evid. 617(c)(1)(C)(i). The process of creating a photo array should be automated, “using the same or sufficiently similar process or formatting,” be computer-generated where possible, and contain no writing. *Id.* R. 617(c)(1)(iii)–(iv) & advisory committee note. One way to test the array for fairness is to ask a random sample of non-witnesses whom they believe to be the suspect in the array. If the non-witnesses in the experiment consistently pick the real suspect, or if the choices are not distributed evenly, the array is problematic and should be reconstituted. Wells Interview.

Police must also ensure that each photo array or lineup contains only one suspect and five “fillers.” *U.S. Dept. of Justice, Eyewitness*

Identification: Procedures for Conducting Photo Arrays 3.1 (2017) [hereinafter *D.O.J. Procedures*]. A filler is a non-suspect such as a police officer or currently incarcerated inmate who could not have committed the crime. If a lineup is entirely composed of suspects, an eyewitness cannot fail in his or her choice – even if that choice is a random one. The inclusion of fillers makes it more likely that a random choice will be a wrong one and thus helps to prevent mistaken identifications.

Similarly, the photo array or lineup must contain at least one suspect. Most witnesses will choose someone during the identification procedure, even if the real perpetrator is not present. In cases of multiple suspects, the witness should be asked to view multiple arrays or lineups and should be told in advance that he or she will be asked to view more than one array. *D.O.J. Procedures* 3.6. Each array should again contain only one of the possible suspects and five new filler subjects. If the suspect has a remarkable feature, such as a facial scar, the fillers should match the suspect's feature, or photos should be doctored to appear as if they do. *Id.* at 3.3. In the case of multiple witnesses, each should be shown the photo array or lineup in separate procedures, and the suspect should be placed in different positions each time. Utah R. Evid. 617(c)(1)(E).

Because witnesses tend to pick someone during an identification procedure regardless of whether the actual perpetrator is present, law enforcement should not tell the witness that a suspect is in custody. Instead, law enforcement should always instruct the witness in a “neutral and detached” way, *id.* R. 617 advisory committee note, that the person “who committed the crime may or may not be . . . depicted in the photos,” that “it is as important to clear a person from suspicion as to identify a wrongdoer,” that the person in the photo “may not appear exactly as he or she did on the date of the incident because features such as weight and head and facial hair may change,” and, perhaps most importantly, that “the investigation will continue regardless of whether an identification is made,” *id.* R. 617(c)(1)(B). Those instructions should be signed and dated by the witness. *Id.* R. 617 advisory committee note. The witness should also be given an opportunity to “ask questions about the instructions before the process begins.” *Id.* Once the witness begins the viewing process, “the person conducting the procedure should not interrupt the witness or interject.” *Id.* ; *D.O.J. Procedures* 6.2.

The identification procedures should be recorded, and the witness's response should be documented. The response should include a “confidence statement” in which “law enforcement timely asked the witness how certain he or she was of any

identification.” Utah R. Evid. 617(c)(1)(D). The question generating the confidence statement can be as simple as asking the witness, “How sure are you?” A witness doesn’t need to quantify the answer, but the administrator may ask follow-up questions. For example, “If the witness is vague in his or her answer, such as, ‘I think it’s number 4,’ the administrator should say: “You said, [I think it’s #4]. What do you mean by that?” *D.O.J. Procedures* 8.3. The responses, including verbal responses, gestures, and reactions, should be documented verbatim at the time that the statement is given. *Id.* at 9.1.2.

A confidence statement is an integral part of the identification because an initial confidence statement is often a more reliable predictor of eyewitness accuracy than is a witness’s confidence at the time of trial. However, the confidence statement must be taken at the time of the procedure. Waiting to ask for a confidence statement will often create hindsight bias and cause the witness to believe that he or she was sure in the identification all along – even if the witness was not. Wells Interview.

Finally, and perhaps most importantly, law enforcement should use double blind procedures through the identification process. In a double blind identification procedure, the person who conducts a lineup or organizes a photo array and all those present in the room during the procedure (except defense counsel) should be unaware of which person is the suspect. Utah R. Evid. 617 advisory committee note.

A double blind procedure assures that the procedure is conducted by an administrator who is not involved in the investigation and has no information about the suspect. This type of neutral administrator is less likely to signal the identity of the suspect or even signal that the perpetrator is in the lineup or the photo array. Signals from a procedure administrator may be intentional or inadvertent and may be verbal or non-verbal. Verbal cues sometimes occur prior to the identification, for example, when an officer tells a witness, “We found the guy with your credit cards and just need you to ID him” or “We arrested someone we want you to identify.” Verbal cues also occur during or after the identification, for example, if an officer says, “Good job,” or “You picked the right guy.” Post-identification feedback artificially boosts the confidence of a witness and ultimately contaminates any trial identification. Interview with Dr. Elizabeth F. Loftus, Univ. of Wash. (June 24, 2020). Non-verbal cues may be subtle but impactful, for example, holding a photo array with a finger pointed at the suspect, nodding after an identification, or even making eye contact with another officer in the room.

In some circumstances a double blind procedure will prove impossible. This could occur, for example, in some smaller jurisdictions, in circumstances where the witness will only participate in a procedure conducted by the investigating officer, or in high-profile investigations where all law enforcement officials are aware of the suspect’s identity. In these situations, the agency may need to use “blinded” identification procedures. *D.O.J. Procedures* 5.2.

In a blinded procedure, the administrator is aware of the identity of the suspect but is unaware of which photo a witness is viewing at a particular time. For example, the administrator could place photos for the photo array in separate folders, shuffle the folders so he or she can’t see the order or arrangement of the photographs, and then sit in a place where he or she can’t see which photo the witness is viewing at any time. *Id.* at 5.3. These blinded procedures are possible only for photo arrays. Lineups must be conducted using double blind procedures. Utah R. Evid. 617 advisory committee note.

Regardless of whether the administration is double blind, blinded, or neither, the procedure should be audio or video recorded. *D.O.J. Procedures* 9.1.1. Witness statements, gestures, and non-verbal reactions should be written down and confirmed by

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the witness, *id.* at 9.1.2, and law enforcement should “refrain[] from giving any feedback regarding the identification,” Utah R. Evid. 617(C)(1)(D)(ii).

Special Considerations for Showup Procedures

Showups often occur soon after the reported crime, which may increase the reliability of the identification. They also permit the quick release of suspects early in the investigation and may be necessary for the development of probable cause. American Bar Association, *American Bar Association Statement of Best Practices For Promoting the Accuracy of Eyewitness Identification Procedures* (2004), <https://www.nacdl.org/Document/American-Bar-Association-Statement-of-Best-Practic>.

However, showups carry an additional risk of eyewitness misidentification. Identifications during showups are less reliable than those generated by properly constructed lineups. *Id.* The witness is usually shown a single person who matches the witness’s original description of the perpetrator. The suspect may be wearing clothing or have other distinguishing features that match the witness’s original description. The suspect may be located close to the crime scene and may be clearly in police custody at the time of the identification. All these factors overtly or subtly influence the identification process.

To determine whether a showup was “unnecessarily suggestive or conducive to mistaken identification,” judges should consider many of the same factors they consider in evaluating other identification procedures. Utah R. Evid. 617(c)(2). As with lineups and photo arrays, law enforcement should instruct the witness that the person the witness is viewing “may or may not be the suspect,” *id.* R. 617(c)(2)(C), and should record a witness confidence statement immediately following the procedure, *id.* R. 617(c)(2)(J). Because it is impossible to conduct a double blind or blinded showup, law enforcement must take care not to “suggest[], by any words or actions, that the suspect is the perpetrator.” *Id.* R. 617(c)(2)(C)(I).

Judges should additionally consider a variety of factors that can independently taint an identification made during a showup. Judges should consider the location of the showup and question whether the showup was conducted “at a neutral location as opposed to law enforcement headquarters or any other public safety building” and whether “the suspect was in a patrol car, handcuffed, or physically restrained by police officers.” *Id.* R. 617(c)(2)(B). Equally important is whether “law enforcement documented the witness’s description prior to the showup” and whether the same suspect was presented “to the witness more

than once.” *Id.* R. 617(c)(2)(F). Judges should also consider superficial ways that the suspect might match the description of the perpetrator, such as whether the suspect was required to “wear clothing worn by the perpetrator,” “conform his or her appearance in any way to the perpetrator,” “speak any words uttered by the perpetrator,” or “perform any actions done by the perpetrator.” *Id.* R. 617(c)(2)(G)–(H). In the case of multiple witnesses, law enforcement should take “steps to ensure that” multiple witnesses “were not permitted to communicate with each other regarding the identification of the suspect.” *Id.* R. 617(c)(2)(D).

Additionally, the court may consider whether the showup was “reasonably necessary to establish probable cause.” *Id.* R. 617(c)(2)(D). Because showups carry an inherent risk of unreliability, it is foolhardy to taint an identification procedure if it is not strictly necessary. “Once law enforcement has probable cause to arrest a suspect, . . . a witness should not be allowed to participate in showup proceedings but should participate only in lineup or photo array procedures.” *Id.* R. 617 advisory committee note.

Other Relevant Circumstances

In addition to identification procedures, a “court may evaluate an identification procedure using any other circumstance that the court determines is relevant.” *Id.* R. 617(c)(3). One particularly relevant additional circumstance is the amount of time it took the witness to make an identification. Identification accuracy is largely diminished after thirty seconds of consideration. If the real perpetrator is included in the photo array, lineup, or showup, the witness will usually make an identification within a few seconds. Wells Interview.

PART II COMING ATTRACTIONS

In Part II of this series we will examine how and when to litigate issues surrounding eyewitness identification, when and how to include expert opinions and testimony, effective cross-examination of eyewitness testimony, and the role of jury instructions to help jurors understand factors that influence witness perception and memory and judge the reliability of eyewitness identification.

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Strong & Hanni regrets to announce that

Elizabeth R. Loveridge

our law partner and true friend,
passed away on February 4, 2020, after
a valiant two-year battle with cancer.

She was a lawyer of notable skill, keen judgment, and extraordinary common sense. We remember and honor her for her contributions of professional excellence and genuine goodness.

Liza graduated from the University of Wisconsin Law School in 1991 and joined the firm of Woodbury & Kesler, where she practiced for 27 years. In 1998 she was appointed to serve as a panel Chapter 7 Bankruptcy Trustee, a position she held until just days before her passing. She also served for many years on the board of the Utah Bankruptcy Lawyers Forum and for a term as chair of the Bankruptcy Section of the Utah State Bar. In 2018, she joined Strong & Hanni as a shareholder and served as chair of the firm's Bankruptcy and Creditor's Rights section. Her expertise, commitment, and generous spirit quickly made her a valued part of the Strong & Hanni family.

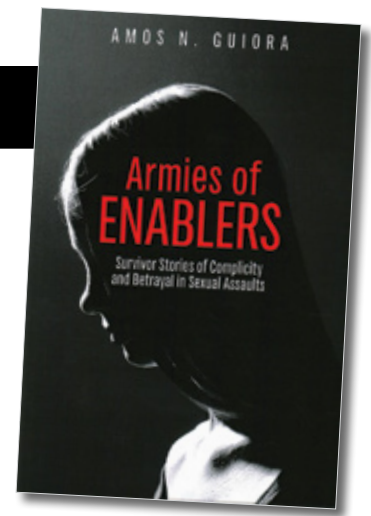
Beyond practicing law, Liza's dearest treasure was her relationships with friends and family, starting with her children, Tommy and Josie. Like so many women, she gracefully answered the demands of a distinguished career, without sacrificing an ambitious agenda serving the needs of her children, her family, and a very large circle of close friends. She lightened all of these relationships with an infectious laugh, a love for fun, and a willingness to get the work done.

In the later stages of her fight with cancer, Liza was keenly aware of and deeply grateful for the support and kindness of her friends in the legal profession, especially those in the bankruptcy courts and the United States Trustee's office. Strong & Hanni appreciates the kind words many of you have shared with us and extends its deepest sympathies to all who are mourning her loss.

Armies of Enablers: Survivor Stories of Complicity and Betrayal in Sexual Assaults

by Amos Guiora

Reviewed by Anna Rossi



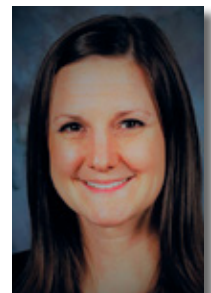
Professor Amos Guiora's latest book, *Armies of Enablers: Survivor Stories of Complicity and Betrayal in Sexual Assaults*, is a passionate argument for the development of legislation criminalizing those who turn a blind eye to sexual assault within the institutions for which they work. Guiora is a law professor at the University of Utah and has previously published works focused on those who witness wrongs occurring and do nothing, notably his book on bystander accountability, *The Crime of Complicity: The Bystander in the Holocaust*. Prof. Guiora takes the accountability argument one step further in *Armies of Enablers*, and asserts that the enabler – the person who is made aware of a sexual assault but focuses on protecting the institution in which it occurs rather than the survivor of the assault – should be punished criminally in order to deter future enabling behavior within institutions.

The thesis of *Armies of Enablers* is that those who are made aware of abuse occurring within their institutions and choose to do nothing, thereby protecting the institution and abandoning the survivor, should be subject to criminal penalties up to and including incarceration. The crux of Prof. Guiora's argument is that the enabler's abandonment causes further harm to individuals who have already been victimized by the perpetrator of the physical or sexual abuse, and that only through criminalization of enabling behavior can we deter future offenders. Criminalization, Prof. Guiora argues, will achieve two goals: it will protect known victims from further harm and prevent the victimization of others. The idea raises interesting questions for the reader: Can we criminalize the behavior of someone who fails to act when they know someone is being harmed? And if so, should we? Prof. Guiora acknowledges the complexity of this issue, and recognizes that he is very much prioritizing the needs of survivors in making his argument. This book is not an

unbiased examination of the pros and cons of criminalizing enabling behavior; it is a persuasive piece written with the intent to convince its reader that enablers deserve to be punished criminally. As such, the book contains valuable information in support of criminalization, but does not discuss alternatives that may focus more on root or societal causes that are of interest to those involved in criminal justice reform.

Prof. Guiora justifies criminalization of enabling behavior expertly in the 200-plus pages of this book, using his own expertise and the lived experiences of survivors. He takes care to ensure that he does not simply recount the details of survivors' stories but includes an appropriate amount of detail so as to educate the reader as to the harm suffered at the hands of their abusers. He also repeatedly names those perpetrators in the chapters, including Larry Nassar, Jerry Sandusky, and several Catholic priests – names recognizable to anyone who has read the news surrounding these types of scandals over the years. The discussion of the underlying offenses committed by the primary perpetrator in these cases serves as a necessary backdrop for the argument that the enabler should face criminal consequences, as it is the enabler who causes this additional trauma for survivors through inaction, abdication of responsibility, and breaking of trust – the actual sexual abuse

ANNA ROSSI has two decades of experience working in and toward a criminal legal system that is fair and just for all.



often being the less traumatizing event for the survivors. Prof. Guiora explains that many survivors make it through the initial abuse only to be forced through a second wave of suffering at the hands of the enabler when the people to whom they report – their coaches, athletic trainers, athletic directors, university counselors, Title IX offices, or clergy – dismiss their complaints in an effort to protect the institution. This dismissal leaves the survivor feeling abandoned and victimized a second (and potentially third, fourth, fifth...) time by the people charged with protecting them. Prof. Guiora asserts that lack of protection is a second justification for criminalization of enablers – a failure of a duty to protect those for whom they are responsible. Prof. Guiora argues that the only way to deter future enablers from the ignorance of duty and abandonment of survivors is to criminalize this deliberate indifference.

Whether or not one agrees with the idea that enablers should face criminal prosecution, the “how” of that process is less clear in Prof. Guiora’s book. He identifies the existing mechanisms that may be used to hold enablers liable, such as bystander laws that have been enacted in several states, mandatory reporting laws that exist in others (including Utah), Title IX processes and procedures, and other civil remedies, but asserts that none of those do quite enough to effectively address and deter the behavior of an enabler. There is no real discussion of the obvious slippery slope that criminalization of enabling behavior would create, given the layers of bureaucracy and the potentially dozens of individuals with varying levels of knowledge of assault reports within large institutions, not to mention those outside of those institutions who may have knowledge and do nothing. One issue here is what constitutes “knowledge” for purposes of culpability. What is required of the coach who hears whispers in the locker room but does nothing to investigate them? Does “knowledge” mean “actual knowledge” of wrongdoing or would it require reporting of unverified information? Depending on the level of culpability for individuals with varying levels of knowledge, there is a potential that reports will be made out of an abundance of caution where no abuse has occurred or been actually alleged, leading to the possibility of unnecessary investigations that could cause severe damage to the individuals

targeted and others involved. Additionally, there is a very real possibility that the prosecution of individuals within an institution, especially a large one like a public university, could involve dozens of indictments, something that most prosecutorial agencies do not have the resources to address.

Prof. Guiora also acknowledges in his book that there is room for a discussion surrounding the effects that social structures and conditioning have on the lack of reporting, such as children being taught to respect authority and feeling like they have no voice to report sexual abuse. He does not, however, delve into those societal failures or how macro changes might be made that could render punishment of the enabler unnecessary. To be fair, this isn’t the point of the book, but the disempowerment of females and youth is a very real issue in our society, and one that deserves attention in relation to this particular subject. It warrants discussion of the concept that raising children – boys

and girls alike – in a society that holds open and honest conversations about bodies, sex, and power, as well as encourages open dialogue around sexual assault rather than shaming victims into silence, could potentially prevent these institutional situations from occurring in the first place. As criminal justice reform discussions shift the narrative

away from calls for more incarceration of more individuals for more crimes and toward root causes and prevention, those topics cannot be ignored in this discussion.

Prof. Guiora’s support for the criminalization of enabling sexual offenses within institutions is passionate and clearly comes from a valid concern for the well-being of survivors of sexual assault and sexual harassment. *Armies of Enablers* is incredibly helpful in understanding the arguments made in support of legislation criminalizing the behavior of enablers but does not delve deeply enough into the procedural issues and practical shortcomings surrounding the proposed law, nor does it provide information for readers who seek societal and community solutions that would steer away from further incarceration as the solution to societal ills. Though a thorough conversation on both sides of the issue is needed, Prof. Guiora does an excellent job of introducing and inviting his readers to the discussion.

***Armies of Enablers:
Survivor Stories of Complicity and
Betrayal in Sexual Assaults***

by Amos Guiora

**Publisher: American Bar Association
(2020)**

Pages: 258

Available in paperback

Why Attorneys Should Embrace LPPs

by Scotti Hill

Who are LPPs and why should law firms hire them?

A little over a year after its inaugural licensing examination, the Utah State Bar's Licensed Paralegal Practitioner (LPP) program has seen incremental but consistent growth. Beginning with a 2015 task force sponsored by the Utah Supreme Court, the LPP program was implemented as an entirely new legal profession with two predominant goals in mind: to assist the ever-increasing population of self-represented parties in the state of Utah, and to create an independent market for a novel legal professional.

The Utah State Bar, seizing upon early trends of LPP program implementation throughout the nation, began licensing qualified applicants in 2019, and to date has licensed thirteen LPPs. LPPs are authorized to practice law in the following areas: family law, debt collection, and unlawful detainer (evictions) actions. This scope of practice is codified in Judicial Council Code of Judicial Administration Rule 14-802 as an exception to the unauthorized practice of law. LPPs may enter into contractual relationships and represent clients, assist clients in completing relevant pleadings, motions, and applicable forms, and negotiate with opposing counsel on settlement and mediation discussions. An LPP's scope of practice is limited to forms approved by the Judicial Council.

Like attorneys, licensing for LPPs is contingent upon successfully passing a rigorous licensing exam administered twice yearly by the Bar. Additionally, LPPs are bound by the Rules of Professional Conduct and have annual CLE requirements.

With the implementation of legal 'paraprofessionals' on the rise nationally, Utah LPPs are pioneering a new form of legal services and representing clients previously unlikely to seek out legal assistance. Most of the current slate of LPPs work for law firms, raising interesting questions about how attorneys and LPPs are working together and how they may forge new and innovative business arrangements. In my survey of firms that currently employ LPPs, two major themes emerged: LPPs make firms more well-rounded in their offerings and thus capture more of the market as a "full-service firm," and in doing so, have the potential to greatly benefit the public at large.

Capturing more of the market as a 'full-service' law firm

Dean Andreasen and Diana Telfer, both Directors, Shareholders and Co-Chairs of the Family Law Practice Group at Clyde Snow Sessions, say their firm has benefited from having an LPP on staff. In 2019, the firm's paralegal Amber Alleman expressed a desire to get licensed. The firm was eager to assist Amber in her endeavor. In 2020, Amber was named the distinguished paralegal of the year by the Utah State Bar.

"Our firm was immediately supportive. Amber has done really well and now has her own book of business," says Telfer. Now, not only is Amber bringing in clients who traditionally could not afford an attorney, but also those who may be wary of going to a law firm for help. In many of her cases, she has been retained to assist with smaller, less complex legal issues.

"I think it speaks volumes about an individual's motivation to the law as a profession," says Brandon Baxter, partner at Peck Hadfield Baxter and Moore, of employees willing to undergo the rigorous licensing requirements of the LPP program. Baxter's Logan-based firm employs two recently licensed LPPs: Tonya Wright and Rheane Swenson. "Philosophically, if you really believe in your paralegals, you will support them in their goals. This increased training is also going to pay dividends for your firm."

Another benefit of working within a law firm, however, is the support in cases where legal issues evolve throughout the course of the representation. In such cases, one of the firm's associates can assist for issues outside the scope of an LPP's practice. This "cross-fertilization" as Andreasen puts it, can

SCOTTI HILL is Associate General Counsel and LPP Administrator at the Utah State Bar.



benefit the entire firm and the public. “It’s not cost or time effective for a partner or senior associate to handle a case that would typically be handled by someone like Amber, but [hers] is [an] important aspect of legal services that we want to provide to the public in general.”

Ultimately, “LPPs are going to enhance your business, rather than take it away,” says Telfer.

Holly Nelson, Partner at Dart Adamson and Donovan agrees. “Having an LPP at our firm allows us to meet the needs of more clients than we could have helped previously,” she says. “If it’s an issue that doesn’t justify a partner’s fees, it’s great to have the option to still take care of that person. The firm’s LPP “Susan [Morandy], has so much experience doing this type of work. She’s actually been doing family law longer than I have.”

The ease of access is also desirable, as attorneys may be booked out for months with active caseloads, whereas LPPs, due to the limited scope of their work, may be able to assist a client relatively quickly.

“While our LPP isn’t doing a really involved representation, there’s an immense value in getting simple questions answered,”

says John Shaeffer, Partner at Dart Adamson and Donovan.

Indeed, an LPP can help clients go through complex paperwork, such as a custody agreement, and utilize their billable rate to help navigate the client through the legal process. This is particularly important as more clients opt to represent themselves due to high legal costs.

“Sometimes clients don’t know what questions to ask and often don’t have someone to help them through the process. Having an LPP to assist is empowering and it provides a great service to our community,” Shaeffer says.

Undoubtedly, there remain those who are skeptical of LPPs and even worry they may take business away from attorneys.

“Change and things that are different are hard, I get that. LPPs, however, provide a really valuable service,” says Nelson.

The data bears out that the market predominantly captured by LPPs are not those who would otherwise hire lawyers, but instead those who would opt for self-representation. As Nelson explains,

Ben Miller has represented hundreds of clients in state and federal courts as an appellate advocate and strategist. And as an adjunct professor of law, he has taught classes on legal writing, oral advocacy, and criminal law and procedure. His justice reform op-eds have appeared widely in venues like The Washington Post, Slate, and Politico.

We welcome him.



BEN MILLER

The LPPs that I know in this community are all with well-respected firms. It's a whole part of a service that you can provide at a firm, which is highly valuable and translates to other areas of law where you want to be able to provide services that correspond and justify the fees. Hiring an LPP gives you a better way to truly be a 'full service' law firm,

Those firms who have now hired LPPs believe that not only has the decision already paid off, but that it will allow them to capture a market share previously unimaginable without an LPP's services.

"From a law-office perspective, we appear more appealing in the marketplace when we can bring a broad range of services to the public and market something to people that more closely fits their particular needs," Shaeffer says. "It's also such a bonus for minds other than attorneys to be looking at a legal issue," Nelson adds.

"Our LPPs take clients we might have previously turned away," says Baxter. "It's great because now there's a super high-quality person who can assist them with that issue." In some cases, he says, a client, whom the firm previously assisted with a personal injury matter, may later need help with a divorce. "Because we have a pre-existing relationship with that client, they would prefer

to use us for their legal needs. Prior to recently however, we wouldn't have been able to assist with such cases," says Baxter.

Access to Justice

In a 2015 report by a task force to examine Limited Legal Licensing, the Utah Supreme Court isolated family law, debt collection, and unlawful detainer (evictions) actions as the areas constituting the greatest unmet legal needs. A 2019 report from the Utah Work Group on Regulatory Reform noted that "at least one party was unrepresented throughout the entirety of the suit of all civil and family law disputes disposed of in the Third District in 2018."

Now, LPPs can assist those who would otherwise go at it alone.

By billing at a lower rate than attorneys, LPPs can assist those who traditionally forfeit legal services and opt for self-representation. "In terms of public service, the LPP program is great because of its relative affordability – [the program] is a good public service and access to justice initiative, which is great PR for any firm wishing to show their commitment to these issues," says Telfer. "I see it as an all-around benefit, even to a solo practitioner. [An LPP] is bringing in cases that could offset the costs of running the office."

When Shaeffer found out about the LPP program, he recognized the access to justice goals of the program as consistent with his firm's pro bono initiatives. Others agree.

"I view the LPP program as one of the best, most targeted ways to meet the unrecognized legal needs of our population," says Baxter.

"The practice of law is a lot about service, and in helping others, it has brought a lot of meaning to my life. Seeing Tonya and Rheane being able to do that is exciting."

Conclusion

Now, five years after a Utah Supreme Court Task Force recommended the creation of the LPP program, other states are following suit. In August 2020, Arizona's Supreme Court issued an order creating a Licensed Paraprofessional to allow for nonlawyers to offer limited legal services to clients in misdemeanor cases in which the punishment does not include incarceration. Likewise, Minnesota has launched a pilot program whereby legal paraprofessionals may aid parties in evictions and domestic issues. Other jurisdictions are following suit. With Utah paving the way, members of the Bar are wise to adapt to the vast opportunities of this profession, including partnerships that can bolster their firm's economic and charitable opportunities.



ZEALOUS ADVOCATE

Burbidge | Mitchell welcomes Clancey Henderson back to our team. Clancey recently served as a law clerk to the Honorable Judge David Mortenson on the Utah Court of Appeals. He previously clerked for the U.S. Senate Judiciary Committee through the office of Senator Orrin Hatch and served as a judicial intern to the Honorable Judge Carolyn McHugh on the U.S. Court of Appeals for the Tenth Circuit. Prior to entering the legal profession, Clancey was an intelligence analyst in the United States Army for nearly ten years. He completed multiple combat tours overseas and received recognition for outstanding service.

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Lawyer Discipline Rules Amended

by Keith A. Call

A couple of months ago (December 18, 2020, to be exact), you probably received an email notice from the Utah Bar letting you know that sixty-nine rules relating to lawyer discipline and disability had been amended. Utah Court of Appeals Judge Diana Hagen and I predicted this – at least to some extent. Last year we reported on an American Bar Association report that recommended several reforms to Utah’s lawyer discipline system. We also reported on the Utah Supreme Court’s formation of a new Oversight Committee for the Office of Professional Conduct and predicted there would be more changes coming. *See* Diana Hagen and Keith A. Call, *Utah Supreme Court Forms OPC Oversight Committee*, 32 UTAH B.J. 32 (May/June 2019). Those changes are now here.

I know you didn’t read all those amendments – likely because you anticipated I would give you a neat summary of the key changes. You are so smart! Here is the summary you were anticipating.

Disciplinary Rules Streamlined and Consolidated into One Place

Before the 2020 amendments, rules governing disciplinary actions were found in two different chapters of the Utah Code of Judicial Administration. Now the disciplinary rules have been consolidated into a single chapter, making it easier to reference and find what you may be looking for. *See* Utah Code Jud. Admin. R. 11-501 *et. seq.*

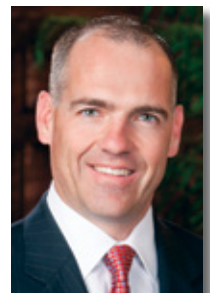
The amended rules also clarify some confusing concepts from the prior rules. For example, a “Complaint,” formerly referred to as an “Informal Complaint,” refers to any written allegation of lawyer misconduct that is submitted to or initiated by the Office of Professional Conduct (OPC). *Id.* R. 11-502(g); *see also id.* R. 11-505. A “Notice,” formerly known as a “Notice of Informal Complaint” or NOIC, is what the OPC sends to the respondent/attorney, which identifies for the lawyer the possible violations of the Rules of Professional Conduct. *Id.* R. 14-502(n). A lawsuit filed by the OPC in district court alleging lawyer misconduct, formerly known as a “formal complaint,” is now referred to as an “Action.” *Id.* R. 11-502(a).

The amendments also made a host of other changes too numerous to fully explain here. Many of them are purely technical or clarifying changes. Some of the more substantive changes address the statute of limitations for disciplinary complaints, complaint procedures, procedures for answering a complaint, screening panel make-up and responsibilities, disclosure, recusal and disqualification of screening panel members, subpoena rights and procedures, screening panel hearing procedures, procedures for appealing the determination of a screening panel or Ethics Committee Chair, limitations on screening panel members’ ability to represent clients in disciplinary proceedings, procedures after a lawyer is found guilty or enters a plea to a crime, and requirements of and conditions for probation or diversion.

Continuation of OPC Oversight Committee

The Utah Supreme Court created a new Oversight Committee for the OPC in its March 2019 rule changes to help implement the ABA’s recommendations. *See* Utah Code Jud. Admin. R. 11-503. This is a five-member committee appointed by the supreme court, with the Bar’s Executive Director serving as a non-voting member. *Id.* The 2020 rule changes continue the Oversight Committee and expand its role. Among other things, the Oversight Committee is required to implement performance metrics and conduct annual evaluations of the OPC, approve the OPC’s budget, recommend applicable rule changes to the supreme court, recommend a Chief Disciplinary Counsel for the OPC to be appointed by the supreme court, monitor the OPC’s workload and recommend to the supreme court adequate staffing, review

KEITH A. CALL is a shareholder at Snow, Christensen & Martineau. His practice includes professional liability defense, IP and technology litigation, and general commercial litigation.



and consider public input, and make appropriate recommendations to the supreme court regarding complaints about the OPC's Chief Disciplinary Counsel. *Id.* R. 11-503(b)–(c).

OPC Independence from Bar

Some of the rule changes are designed to foster greater independence between the Office of Professional Conduct and the Utah State Bar. For example, under the former rules, the OPC's "senior counsel" was appointed by the Bar Commission. Now, the OPC's "Chief Disciplinary Counsel" is hired by and "serves at the pleasure of the Utah Supreme Court." *See* Utah Code Jud. Admin. R. 11-520. Under the former rules, the OPC's senior counsel worked with the executive director of the Bar to formulate a proposed budget for the OPC, which had to be approved by the Bar Commission. Now the OPC's Chief Disciplinary Counsel develops a budget for approval by the Oversight Committee, which then submits the budget to the supreme court and the Bar. *Id.* R. 11-503(b)(2)(B); *id.* R. 11-520(b)(2). The Bar Commission must ratify the budget for the OPC as approved by the Oversight Committee unless the Bar Commission petitions the Utah Supreme Court for modifications. *Id.* R. 14-207(a).

You may notice some related changes that are not spelled out in the rules. For example, the OPC's website is no longer integrated with the Bar's website. Rather, the OPC now has its own independent website. If you try to find the OPC on the Bar's website, you will find this message:

OFFICE OF PROFESSIONAL CONDUCT

"The Office of Professional Conduct is no longer part of the Utah State Bar. Please visit opcutah.org for more information about filing information with the OPC, the procedural rules for attorney discipline, public attorney discipline, requesting an OPC attorney speaker at your next CLE event, and all other matters pertaining to the role of the Office of Professional Conduct."

The OPC's website is now found at www.opcutah.org.

What Has Not Changed

In May 2019, Judge Hagen and I wrote, "Nothing will raise a lawyer's blood pressure like getting a letter from the Office of Professional Conduct stating that you are under investigation for violation of the ethical rules." Hagen and Call, *supra*, at 32. Unfortunately, nothing in the amended rules will change this reality. Although streamlined and clarified in many respects, the disciplinary rules can still seem unfamiliar and daunting. It is nearly impossible for most recipients of such letters to stay objective. The best antidote, of course, is to do your best to understand and follow all ethical rules. In the unfortunate event you do get one of those agonizing letters from the OPC, my advice is to *keep calm, carry on, and get help from someone you trust*.

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the author.

NEW SHAREHOLDERS



Robert B. Cummings | 801.322.9248
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Matthew B. Purcell | 801.322.9333
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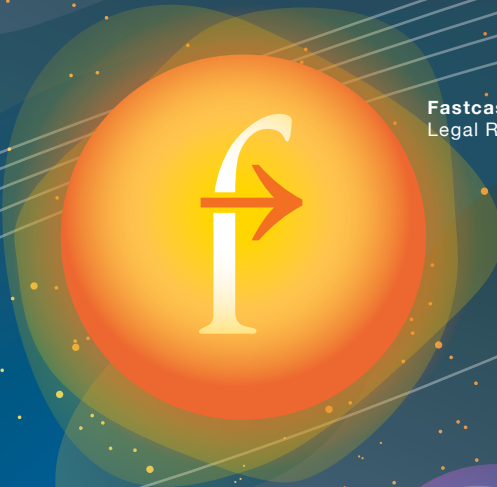
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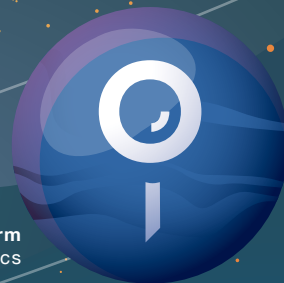
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2021 Spring Convention Awards Request for Award Nominations

The Board of Bar Commissioners is seeking applications for Awards to be given at the “virtual” 2021 Spring Convention. These awards honor publicly those whose professionalism, public service, and public dedication have significantly enhanced the administration of justice, the delivery of legal services, and the improvement of the profession.

Please submit your nomination for the Spring Convention Awards no later than Friday, February 26, 2021. Use the Award Form located at utahbar.org/nomination-for-utah-state-bar-awards/ to propose your candidate in the following categories:

2021 Dorothy Merrill Brothers Award – For the Advancement of Women in the Legal Profession.

2021 Raymond S. Uno Award – For the Advancement of Minorities in the Legal Profession.

The James Lee, Charlotte Miller, and Paul Moxley Outstanding Mentor Awards for 2020.

These awards are designed in the fashion of their namesakes; honoring special individuals who care enough to share their wisdom and guide attorneys along their personal and professional journeys.

The Utah State Bar strives to recognize those who have had singular impact on the profession and the public. We appreciate your thoughtful nominations.

IN MEMORIAM

Judge Sharla Williams was inadvertently omitted from the list of attorneys, paralegals, and judges who passed during 2020.



Distinguished Paralegal of the Year Award

The Distinguished Paralegal of the Year Award is presented by the Paralegal Division of the Utah State Bar and the Utah Paralegal Association to a paralegal who has met a standard of excellence through his or her work and service in this profession.

We invite you to submit nominations of those individuals who have met this standard. Please consider taking the time to recognize an outstanding paralegal. Nominating a paralegal is the perfect way to ensure that his or her hard work is recognized, not only by a professional organization, but by the legal community.

Nomination forms and additional information are available by contacting Greg Wayment at wayment@mcg.law.

The deadline for nominations is April 23, 2021, at 5:00 pm. The award will be presented at the Paralegal Day Celebration held on May 20, 2021.

Call for Nominations for the 2020–2021 Pro Bono Publico Awards

The deadline for nominations is March 15, 2020.

The following Pro Bono Publico awards will be presented at the Law Day Celebration in May 2021:

- Young Lawyer of the Year
- Law Firm of the Year
- Law Student or Law School Group of the Year

To access and submit the online nomination form please go to: <http://www.utahbar.org/award-nominations/>. If you have questions please contact the Access to Justice Director, Robert Jepson, at: probono@utahbar.org or 801-297-7027.

Pro Bono Honor Roll

The Utah State Bar and Utah Legal Services wish to thank these volunteers for accepting a pro bono case or helping at a free legal clinic during December and January. To volunteer call the Utah State Bar Access to Justice Department at (801) 297-7049 or go to <http://www.utahbar.org/public-services/pro-bono-assistance/> to fill out our Check Yes! Pro Bono volunteer survey.

Family Justice Center

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James Backman
Tiffany de Gala
Michael Harrison
Brandon Merrill
Kathleen Phinney
Linda Smith
Nancy Van Slooten
Rachel Whipple

Private Guardian ad Litem

Lauren Barros
Sheleigh Harding
Allison Librett
Jack McIntyre
Harold Mitchell
Keil Myers

Pro Se Debt Collection Calendar

Mark Baer
Mike Brown
John Cooper
Jeff Daybell
Lauren DiFrancesco
Greg Gunn
Aro Han
Sierra Hansen
Jarom Harrison
Carson Heninger
Britten Hepworth
David Jaffa
Nathan Jepson
Annie Keller-Miguel
Amy McDonald
Darren Neilson
Chase Nielsen
Chris Sanders
George Sutton
Mark Thornton
Alex VanDiver

Pro Se Family Law Calendar

Harry Caston
Brent Chipman
Jess Couser
Hayli Dickey
Richard Dowse
Connor Flinders
Cassandra Gallegos
Kim Hansen
Danielle Hawkes
Jonathan Hibshman
Jim Hunnicutt
Gabrielle Jones
Robin Kirkham
Patricia LaTulippe
Orlando Luna
Jennifer Percy
Kelly Peterson
Tara Reilly
Spencer Ricks
Zacchary Sayer
Linda Smith
Chad Steur
Virginia L. Sudbury
Sheri Throop
Jaime Topham
Staci Visser
Cory Wall
Orson West
Leilani Whitmer
Jonathan Winn
Leilani Whitmer

Pro Se Immediate Occupancy Calendar

Mark Baer
Joel Ban
Anna Christiansen
Jeff Daybell
Aro Han
Sierra Hansen
Rosemary Hollinger
Brent Huff
Annie Keller-Miguel
Jess Schnedar
Lauren Scholnick
Mark Thornton
Candace Waters

SUBA Talk to a Lawyer Legal Clinic

Turia Averett
Travis Christiansen
Shawn Farris
Bill Frazier
Maureen Minson
Lewis Reece
Chase Van Oostendorp
Lane Wood

Timpanogos Legal Center

Cleve Burns
Babata Sonnenberg

Utah Bar's Virtual Legal Clinic

Julia Babilis
Pamela Beatse
Dan Black
Mike Black
Russell Blood
Adam Clark
Jill Coil
Kimberly Coleman
John Cooper
Jessica Couser
Elizabeth Dunning
Matthew Earl
Craig Ebert
Rebecca Evans
Thom Gover
Robert Harrison
Aaron Hart
Rosemary Hollinger
Tyson Horrocks
Bethany Jennings
Elizabeth Lazcano
Suzanne Marelius
Travis Marker
Gabriela Mena
Tyler Needham
Sterling Olander
Jacob Ong
Ellen Ostrow
Steven Park
Clifford Parkinson

Katherine Pepin
AJ Pepper
Cecilee Price-Huish
Jessica Read
Amanda Reynolds
Chris Sanders
Alison Satterlee
Kent Scott
Thomas Seiler
Luke Shaw
Kimberly Sherwin
Gregory Sonnenberg
Farrah Spencer
Liana Spendlove
Julia Stephens
Brandon Stone
Mike Studebaker
Claire Summerhill
George Sutton
Jason Velez
Jay Wilgus

Utah Legal Services Cases

Helen Anderson
Cleve Burns
James Cannon
Steven Chambers
Jared Cherry
Travis Christiansen
Mary Corporon
Robert Culas
Robert Falck
Jason Fuller
Gregory Hadley
Daniel Irvin
Jessie Lewis
Nathanael Mitchell
Malone Molgard
Keil Myers
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- Utah's Junior & Senior High School Student Mock Trial Competition
- Young Lawyer of the Year (Young Lawyers Division)

For further information or to RSVP for the luncheon, contact:

Matthew Page: 801-297-7059 | Michelle Oldroyd: 801-297-7033
or email: lawday@utahbar.org

For other Law Day related activities visit the Bar's website:

lawday.utahbar.org

Utah State Bar Request for 2021–2022 Committee Assignment

The Utah Bar Commission is soliciting new volunteers to commit time and talent to one or more Bar committees which participate in regulating admissions and discipline and in fostering competency, public service and high standards of professional conduct. Please consider sharing your time in the service of your profession and the public through meaningful involvement in any area of interest.

Name _____ Bar No. _____

Office Address _____

Phone # _____ Email _____ Fax # _____

Committee Request:

1st Choice _____ 2nd Choice _____

Please list current or prior service on Utah State Bar committees, boards or panels or other organizations:

Please list any Utah State Bar sections of which you are a member:

Please list pro bono activities, including organizations and approximate pro bono hours:

Please list the fields in which you practice law:

Please include a brief statement indicating why you wish to serve on this Utah State Bar committee and what you can contribute. You may also attach a resume or biography.

Instructions to Applicants: Service on Bar committees includes the expectation that members will regularly attend scheduled meetings. Meeting frequency varies by committee, but generally may average one meeting per month. Meeting times also vary, but are usually scheduled at noon or at the end of the workday.

Date _____ Signature _____

Utah State Bar Committees

Admissions

Recommends standards and procedures for admission to the Bar and the administration of the Bar Examination.

Bar Examiner

Drafts, reviews, and grades questions and model answers for the Bar Examination.

Character & Fitness

Reviews applicants for the Bar Exam and makes recommendations on their character and fitness for admission.

CLE Advisory

Reviews the educational programs provided by the Bar for new lawyers to assure variety, quality, and conformance.

Disaster Legal Response

The Utah State Bar Disaster Legal Response Committee is responsible for organizing pro bono legal assistance to victims of disaster in Utah.

Ethics Advisory Opinion

Prepares formal written opinions concerning the ethical issues that face Utah lawyers.

Fall Forum

Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.

Fee Dispute Resolution

Holds mediation and arbitration hearings to voluntarily resolve fee disputes between members of the Bar and clients regarding fees.

Fund for Client Protection

Considers claims made against the Client Security Fund and recommends payouts by the Bar Commission.

Spring Convention

Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.

Summer Convention

Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.

Unauthorized Practice of Law

Reviews and investigates complaints made regarding unauthorized practice of law and takes informal actions as well as recommends formal civil actions.

Utah State Bar[®]

2020 Annual Awards

This past year, the COVID-19 pandemic created a unique crisis in access to justice. Many lawyers and judges have gone above and beyond to create new pathways in providing legal services to aid individuals, organizations, and families coping with unpredictable situations. The Utah State Bar Commission selected these special award recipients because they epitomize excellence in the work they do and have served exceptionally during this pandemic.

Judge of the Year



Hon. Kate Appleby

Lawyer of the Year



James W. McConkie II

Professionalism Award



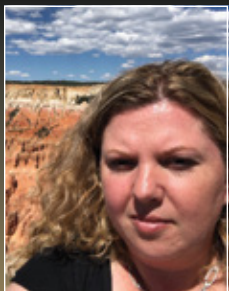
Margaret D. Plane

Lifetime Service Award



Hon. Dee V. Benson
(Posthumously)

Section of the Year Indian Law Section



Heather Carter-Jenkins
Section Chair

Committee of the Year CLE Advisory Committee



Jonathan O. Hafen
Committee Chair

Jeff Handy	Blake Hamilton
Dale Kimsey	Simon Cantarero
Judge Clay Stucki	Judge Diana Hagen
Heather Sneddon	Jim Hunnicutt
Peter Strand	Judge Kristine Johnson
Judge James Gardner	Michael Stahler
Stewart Young	Liz Thompson
Trystan Smith	
Charisma Buck	

Special Service Award



Richard P. Mauro
and the Salt Lake Legal
Defender Association

Notice of Legislative Positions Taken by Bar and Availability of Rebate

Positions taken by the Bar during the 2021 Utah Legislative Session and funds expended on public policy issues related to the regulation of the practice of law and the administration of justice are available at www.utahbar.org/legislative. The Bar is authorized by the Utah Supreme Court to engage in legislative and public policies activities related to the regulation of the practice of law and the administration of justice by Supreme Court Rule 14-106 which may be found at [www.utcourts.gov/resources/rules/ucja/view.html?title=Rule 14-106](http://www.utcourts.gov/resources/rules/ucja/view.html?title=Rule%2014-106). Lawyers may receive a rebate of the proportion of their annual Bar license fee expended for such activities during April 1, 2020 through March 30, 2021, by notifying

Financial Director Lauren Stout at lauren.stout@utahbar.org.

The proportional amount of fees provided in the rebate include funds spent for lobbyists and staff time spent lobbying; travel for a Bar delegate to the American Bar Association House of Delegates; and Utah legislative lobbyist registration fees for the Bar's Executive Director and Assistant Executive Director. Prior year rebates have averaged approximately \$7.80. The rebate amount will be calculated April 1, 2021, and we expect the amount to be consistent with prior years.

Tax Notice

Pursuant to Internal Revenue Code 6033(e)(1), no income tax deduction shall be allowed for that portion of the annual license fees allocable to lobbying or legislative-related expenditures. For the tax year 2020, that amount is 2.95% of the mandatory license fee.

Notice of Utah Bar Foundation Annual Meeting and Open Board of Director Position



The Utah Bar Foundation is a non-profit organization that administers the Utah Supreme Court IOLTA (Interest on Lawyers Trust Accounts) Program. Funds from this program are collected and donated to nonprofit organizations in our State that provide law related education and legal services for the poor and disabled.

The Utah Bar Foundation is governed by a seven-member Board of Directors, all of whom are active members of the Utah State Bar. The Utah Bar Foundation is a separate organization from the Utah State Bar.

In accordance with the by-laws, any active licensed attorney, in good standing with the Utah State Bar may be nominated to serve a three-year term on the board of the Foundation. If you are interested in nominating yourself or someone else, you must fill out a nomination form and obtain the signature of twenty-five licensed attorneys in good standing with the Utah State Bar. To obtain a nomination form, call the Foundation office at (801) 297-7046. If there are more nominations made than openings available, a ballot will be sent to each member of the Utah State Bar for a vote. Nomination forms must be received in the Foundation office no later than 5pm on Friday, April 16, 2021 to be placed on the ballot.

The Utah Bar Foundation will be holding the Annual Meeting of the Foundation in conjunction with the Utah State Bar's Summer Convention. The Summer Convention is currently scheduled to take place July 28–31, 2021 in Sun Valley, Idaho. The Foundation's Annual Meeting would typically be held on Friday, July 30th at 8am. However, due to the COVID-19 pandemic, the event dates, times and delivery method (in-person to online) is subject to change. If you wish to join the Foundation's Annual Meeting, please email iolta@utahbar.org for up-to-date information as July 2021 approaches.

For additional information on the Utah Bar Foundation, please visit our website at www.utahbarfoundation.org.

2021 SUMMER CONVENTION

JULY 26-
AUGUST 1RESERVATION
REQUEST
FORM**SUN VALLEY LODGE:** (single or double occupancy)

Lodge Premier King	\$365
Lodge Suite King (with sitting room)	\$405
Lodge Suite (2 Queens)	\$435
Lodge Terrace Suite (1 King with balcony)	\$585
Lodge Celebrity Suite (1 King, 1 sofa bed, 1 office)	\$720

SUN VALLEY INN: (single or double occupancy)

Inn Standard (1 Queen)	\$260
Inn Luxury (1 King)	\$300
Inn Luxury (2 Queens)	\$325
Inn Grand (1 King)	\$345
Inn Grand (2 Queens)	\$360
Inn Executive Suite (1 King)	\$390
Inn Executive Suite (2 Queens)	\$399
Three Bedroom Inn Apartment	\$650

DELUXE LODGE APARTMENTS:

Lodge Apartment Suite (up to 2 people)	\$550
Two-bedrooms (up to 4 people)	\$640
Three-bedrooms (up to 6 people)	\$740

STANDARD SUN VALLEY CONDOMINIUMS:**Atelier, Cottonwood Meadows, Snowcreek,
Villagers I & Creekside (previously Villagers II)**

Studio	\$275
One Bedroom (up to 2 people)	\$325
Atelier 2-bedroom (up to 4 people)	\$395
Two Bedroom (up to 4 people)	\$395
Three Bedroom (up to 6 people)	\$465
Four Bedroom (up to 8 people)	\$535

All rates are subject to the prevailing taxes and fees.
Currently taxes total 12% (room tax) plus 6% (resort fee)
and are subject to change.

RESERVATION DEADLINE: This room block will be
held until June 28, 2021. After that date, reservations
will be accepted on a space available basis.

Confirmed reservations require an advance deposit equal to one night's room rental, plus tax. **In order to expedite your reservation, simply call our Reservations Office at 1-800-786-8259 and identify yourself with the Utah State Bar Group** or, if you wish, please complete this form and **email to svreservations@sunvalley.com**. Or go to **<https://www.sunvalley.com/lodging#/groups/0721usb1>** to make your reservation online. A confirmation of room reservations will be forwarded upon receipt of deposit. **Please make reservations early for best selection!** If accommodations requested are not available, you will be notified so that you can make an alternate selection. No pets allowed. **Rates are guaranteed July 23–August 4, 2021 based on availability.**

Name: _____

Email: _____

Address: _____

City/State/Zip: _____

Phone: (day) _____

(evening) _____

Accommodations requested: _____

Rate: _____ # in party: _____

I will need complimentary Sun Valley Airport transfer ☐ Yes ☐ No
(Hailey to Sun Valley Resort)

Airline/Airport: _____

Arrival Date/Time: _____

Departure Date/Time: _____

Please place the \$ _____ deposit on my _____ card

Card #: _____ Exp. Date: _____

Name as it reads on card: _____

(Your card will be charged the first night's room, tax and resort fee deposit. We accept
MasterCard, VISA, American Express, and Discover.)

**If you have any questions, call Reservations at 800-786-8259 or email
svreservations@sunvalley.com.**

Check in Policy: Check-in is after 4:00 pm. Check-out is 11:00 am.

Cancellation: Cancellations made more than 30 days prior to arrival will receive
a deposit refund less a \$25 processing fee. Cancellations made within 30 days will
forfeit the entire deposit.



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Attorney Discipline

Visit opcutah.org for information about the OPC, the disciplinary system, and links to court rules governing attorneys and licensed paralegal practitioners in Utah. You will also find information about how to file a complaint with the OPC, the forms necessary to obtain your discipline history records, or to request an OPC attorney presenter at your next CLE event. **Contact us – Phone: 801-531-9110 | Fax: 801-531-9912 | Email: opc@opcutah.org**

Effective December 15, 2020, the Utah Supreme Court re-numbered and made changes to the Rules of Lawyer and LPP Discipline and Disability and the Standards for Imposing Sanctions. The new rules will be in Chapter 11, Article 5 of the Supreme Court Rules of Professional Practice. The final rule changes reflect the recommended reforms to lawyer discipline and disability proceedings and sanctions contained in the American Bar Association/Office of Professional Conduct Committee's Summary of Recommendations (October 2018).

SUSPENSION

On October 6, 2020, the Honorable Mark S. Kouris, Third Judicial District, entered an Order of Suspension, against David A. Goodwill, suspending his license to practice law for a period of two years. The court determined that Mr. Goodwill violated Rule 1.5(a) (Fees), Rule 1.8(a) Conflict of Interests Current Clients, Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), Rule 1.15(e) (Safekeeping Property), Rule 4.2(a) (Communication), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Goodwill's violations arise out of conduct in three matters:

In the first matter, the OPC received notice from Mr. Goodwill's bank that Mr. Goodwill had overdrawn his attorney trust account. Mr. Goodwill had deposited money into his trust account that was from a settlement for his client. Mr. Goodwill transferred some of the settlement proceeds into his checking account, issued a check to the client and paid some costs associated with the settlement. The client had a balance of the settlement in Mr. Goodwill's trust account. Mr. Goodwill began using his trust account as a personal account and comingled his money with the client's money in his personal account.

In the second matter, Mr. Goodwill represented a client in a criminal matter. Another attorney represented the co-defendant. At the co-defendant's initial appearance, his attorney made an offer of a plea that included testifying against Mr. Goodwill's client. Mr. Goodwill drafted an affirmation for the co-defendant to sign which exonerated his client and stated that the

co-defendant lied. Mr. Goodwill visited the co-defendant at the jail knowing that the co-defendant was represented by counsel and had him sign an affirmation.

In the third matter, a couple met Mr. Goodwill when the wife's sister introduced Mr. Goodwill as her fiancé. The next day, Mr. Goodwill asked the wife to loan him money. The wife gave Mr. Goodwill the cash as a loan. The husband, who was unaware of the loan at the time, told Mr. Goodwill on that same day that the wife had suffered from dementia for about fifteen years and was in the early stages of Alzheimer's. After reconsidering giving Mr. Goodwill the money, the wife contacted Mr. Goodwill by text asking him to pay back the money. Mr. Goodwill responded by telling the wife he did not have the money. He then attempted to involve himself in a family contract matter and insisted that he was representing the wife in the matter and that she owed him several thousand dollars more than the loan. He told her that he had collected the money on her behalf on a contingency basis. There was no written signed fee agreement for this representation. The couple did not retain Mr. Goodwill for legal services. The husband contacted Mr. Goodwill to resolve the issue, but Mr. Goodwill refused to speak with the husband. After the wife filed a complaint with the OPC, Mr. Goodwill tried to interfere in the process to have her withdraw the complaint.

DISBARMENT

On December 23, 2020, the Honorable Royal I. Hansen, Third Judicial District, entered an Order of Disbarment against Tyler R. Goucher, disbaring him from the practice of law. The court determined that Mr. Goucher violated Rule 1.3 (Diligence) (Four

Discipline Process Information Office

The Disciplinary Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint, and Jeannine Timothy is the person to contact. Jeannine will answer all your questions about the disciplinary process, reinstatement, and readmission. Jeannine is happy to be of service to you.



801-257-5518

DisciplineInfo@UtahBar.org

Counts), Rule 1.4(a) (Communication) (Four Counts), Rule 1.5(a) (Fees) (Four Counts), and 8.1(b) (Bar Admission and Disciplinary Matters) (Four Counts) of the Rules of Professional Conduct.

In summary:

This case involves four client matters. In the first matter, a client retained Mr. Goucher to draft and file a provisional patent application. The client paid a retainer and Mr. Goucher filed the application. The client paid additional legal fees for Mr. Goucher to file a utility patent application and two trademark applications. The client requested from Mr. Goucher the receipts from the two trademark applications but she did not receive a response. The US Patent and Trademark Office (USPTO) sent a notification to Mr. Goucher that the utility patent application was subject to restriction and a response was required. The utility patent was abandoned due to failure to respond to an office action. The client attempted to contact Mr. Goucher to request status updates but Mr. Goucher did not respond. Eventually, the client was able to contact Mr. Goucher and he informed her that there was a restriction but that he would resubmit the application. Mr. Goucher did not resubmit the application. The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Goucher. Mr. Goucher did not respond to the NOIC.

In the second matter, a client retained Mr. Goucher to file a trademark application. Mr. Goucher told the client that it would take six to eight months to process the application. Several months later when the client contacted Mr. Goucher to inquire about the status application, Mr. Goucher told the client that he needed more information. The client supplied the additional information and Mr. Goucher responded indicating that he would file the application by the end of the day. Mr. Goucher did not file the application on behalf of the client. Mr. Goucher did not respond to the client's multiple requests for information or a refund paid for legal services. The OPC sent a NOIC to Mr. Goucher. Mr. Goucher did not respond to the NOIC.

In the third matter, a client retained Mr. Goucher to file two patents. Mr. Goucher filed a patent (Patent 1) on behalf of the client. The USPTO sent two notices to Mr. Goucher that the application for Patent 1 was incomplete. Mr. Goucher did not respond and Patent 1 was abandoned because of non-action. Mr. Goucher filed a second patent (Patent 2) on behalf of the

client. Over a period of three years, Mr. Goucher told the client several times that he had not heard from the patent office. Patent 2 was abandoned due to the filing fee not being paid and USPTO's inability to receive a response from Mr. Goucher. Mr. Goucher indicated he would refile Patent 1 on behalf of the client but was unable to refile Patent 2 because the client had been selling it for over a year. Mr. Goucher agreed to refile Patent 1 and file two new patents for the client to make up for the loss of Patent 2.

Mr. Goucher filed Patent 1 a second time (Patent 3). The USPTO sent via mail and email notification of Non-Final Rejection to Mr. Goucher regarding drawings in the patent. Mr. Goucher did not respond. The USPTO sent notification to Mr. Goucher notifying him Patent 3 was abandoned. The fourth patent (Patent 4) was filed as a provisional patent. The client contacted Mr. Goucher regarding Patent 3 and Patent 4 and Mr. Goucher told the client that he had no new information regarding the patents. Eventually, Mr. Goucher stopped responding to emails or telephone messages. The client reached Mr. Goucher by telephone and told the client that he did not know what happened but he would rewrite Patent 4 and deal with Patent 3. The client contacted Mr. Goucher every few days over the course of a few weeks and Mr. Goucher responded each time that he needed a couple more days. Mr. Goucher eventually stopped taking the client's telephone calls and there was no voicemail on which to leave a message. The OPC sent a NOIC to Mr. Goucher. Mr. Goucher did not respond to the NOIC.

In the fourth matter, a client retained Mr. Goucher to file an office action response for a patent application and to file a continuation in part application with the USPTO. Mr. Goucher filed the application and a few months later the USPTO issued a non-final rejection. The client contacted Mr. Goucher inquiring if there had been any communication from USPTO. Mr. Goucher denied that there had been any communication. The patent was abandoned due to non-action. The client continued to attempt to contact Mr. Goucher but he failed to respond. Eventually Mr. Goucher responded and stated he would refile the patent. Mr. Goucher did not complete the office action response and did not refile the patent. The OPC sent a NOIC to Mr. Goucher. Mr. Goucher did not respond to the NOIC.

Join us for the OPC Ethics School

March 17 & 18, 2021

Virtual Event – 3 hours each day

**6 hrs. CLE Credit, including at least
5 hrs. Ethics** (The remaining hour will be either
Prof/Civ or Lawyer Wellness.)

Cost: \$100 on or before March 5, \$120 thereafter.

Sign up at: opcutah.org

TRUST ACCOUNTING SCHOOL

Save the Date! January 26, 2022

**5 hrs. CLE Credit,
including 3 hrs. Ethics**

Sign up at: opcutah.org

Professionalism in the Virtual Courtroom

by Grant A. Miller

In the beginning of 2020, Webex was intended as a temporary mechanism to get us through the pandemic. At first, attorneys fumbled with the new technology. Now a year has passed and Webex is likely to become a mainstay in some form or another. The good news is that most litigation attorneys have adapted. But with the normalization of Webex came the proliferation of casual court culture. Matters of litigation are matters of consequence. The virtual courtroom has its complications, but its awkwardness cannot be overcome without a focus on professional decorum. This article contemplates five concepts that can help improve professionalism with individual virtual court appearances.

Wardrobe

Among the most notable casualties of decorum in the virtual courtroom has been wardrobe. Professional dress should still be observed when making an appearance in a court of law, even if working from home. We owe professionalism to our clients, to the court, and to each other and can demonstrate that with professional wardrobe.

Lighting

A little light can go a long way. The trick is to simultaneously light your face and to also light your backdrop. The easiest way to troubleshoot lighting is to sit in front of a window. The



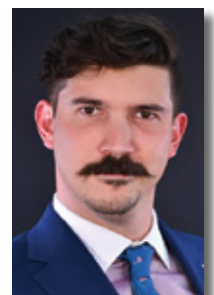
natural light will illuminate your face and backdrop. If you do not have a window in your workspace, take a page from the kids on TikTok and get a selfie ring. A light ring (or a simple lamp pointed at yourself) will go a long way in creating a professional appearance. Just make sure the backdrop is also lit. A lamp on your face but not the background will create

a floating head. A lit backdrop and an unlit face will create a muddled silhouette.

Background

With many of us working from home, it is easy to forget that everyone in court has an intimate window into your living space. Be mindful of what is behind you. Generally, a plain backdrop (like a blank wall) works great. If you are joining court from your office, make sure it is tidy, and use your law library or framed certificates as a backdrop. While it might seem pedantic or tacky, remember that your clients are paying attention. There

GRANT A. MILLER is a trial attorney at the Salt Lake Legal Defender Association and is President-Elect of the Young Lawyers Division.



is a meaningful difference between an attorney who appears in front of a law library as opposed to appearing in front of a cluttered pile of files. Sometimes, a nice backdrop is simply not viable. If you are in a pinch, you might be tempted to use the virtual backgrounds. That is fine, but keep it professional. Webex has some stock backgrounds. The “blur” and “office” backdrops are functional, but resist the temptation of going to the “beach.”

Stance and framing

Center yourself in the camera. Make sure your face is not too high in the frame, nor too low. Make sure to capture your entire face. All too often, attorneys appear from their phones, capturing an aggressive angle if their camera is on a desk or being held above them. Avoid this by positioning your web camera straight on at eye level. When sitting, be thoughtful of posture. Standing desks help significantly. Law schools teach 1Ls to stand when addressing the court. The virtual nature of court does not diminish the significance of this tradition. Standing will not only make you look the part; it also gets you in the right head space.

Decorum

Webex will catch you at inadvertent moments if you are not careful. Make sure your video and audio is always “muted” when not addressing the court. Use caution when engaging the chat function. Be sure to select the intended recipient before sending any messages. All too often, attorneys make clangorous declarations to the entire courtroom. These inadvertent communications can easily offend confidentiality. Of course, an old fashioned email can help from running afoul of this issue.

Attorneys are held to a standard of professionalism, and that standard should not diminish because courtrooms are virtual. To some degree or another, Webex is here to stay. The court carries authority through force of law, but also through professionalism. How clients and the community treat the Bar is largely based on how we treat each other. We will look forward to returning to the courthouse, but in the meantime, make sure to look sharp on Webex.



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A Message From The Chair About Well-Being

by Tonya Wright

I think we can all agree that 2020 was challenging and that 2021 will likely have its own set of challenges. No matter the year, in this profession, lawyer well-being is a frequent topic of discussion. There have been many studies published around the country and in the State of Utah that address the issue. In 2019, the Utah Task Force on Lawyer and Judge Well-Being released a report titled “Creating a Well-Being Movement in the Utah Legal Community.” In that report, they cited several sources reflecting high rates of alcoholism, depression, anxiety, elevated stress, work addiction, sleep deprivation, work-life conflict, job dissatisfaction, ambivalence, and attrition.

It makes perfect sense then, that many of these same issues bleed through to paralegals working with attorneys. I have heard numerous paralegals say, if you can’t handle a lot of stress, extreme stress, being a paralegal probably isn’t a good fit for you. While that is sort of true, that doesn’t necessarily have to mean that paralegals are infallible and should be able to handle constant, intense stress and pressure all of the time, with no relief.

A few years ago (or what may feel like decades ago in 2020 standards), Justin Olsen with Blomquist Hale presented at a CLE sponsored by the Paralegal Division. One of the pamphlets passed out cited “10 Facts About Stress.” As I sat there reading it, I reflected on the past several years of my own life and how I had been handling stress. I recalled how in 2011, when I was hired as a paralegal at my current law firm, I was in my mid-thirties, energetic, fit, feeling healthy; and I was very prideful about my ability to multi-task like nobody’s business. By 2015, I was feeling the effects of extreme stress. I was still rocking my job, but I was also struggling in some areas. And I was failing to admit it to myself, much less to anyone else. I found myself checking off the list: weight gain, fatigue, unhealthy eating habits, constant back pain, pounding headaches, and overwhelming feelings of overload. Like I was drowning. I was visiting doctors more often than I had in my entire life. That day, in that room, as I was looking at “10 Facts About Stress,” I realized that it was time for my own little reckoning. Facts like stress being “the silent killer,” and statistics citing that “75% –90%

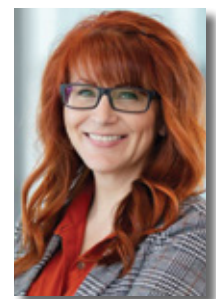
of all visits to primary care physicians are due to stress-related problems,” were eye-opening. A few years later, and with a lot of determination, some of my own corrective methods have worked well for me. But those methods require a lot of work every day, and it definitely took a lot of time to make new habits. I have to remind myself every single day to make sure to choose me.

Paralegals have been called miracle workers, magic, the ones you ask when you want something done. Paralegals have a long list of people to keep happy, including but not limited to attorneys, court staff, clients, and our families, not to mention ourselves. It feels as if there is an expectation that paralegals can juggle a lot, all at once, with no limit, and make no errors.

In preparation for this rambling, I talked to other paralegals, and I received a list of similar stress-inducing issues from most of them. They feel like they can’t make mistakes and there’s not enough time in the day for all of the work that is assigned to them. Oftentimes they work for multiple attorneys, who all assign work to them that is “priority” over all other work, making it essentially impossible to prioritize anything. Work is taking over their lives and they are drowning in tasks. They are afraid that if they speak up, they will be considered “incapable” of doing their job and they are too exhausted for hobbies, exercise, or enjoyment of life. They don’t have energy for their families at the end of the day and they are taking work home with them in order to stay afloat...the list is ongoing. You are probably nodding in the affirmative right now.

These same paralegals, and some others who have been doing this work for a long time, also had some pretty great advice.

TONYA WRIGHT is a Licensed Paralegal Practitioner and litigation paralegal at Peck Hadfield Baxter & Moore in Logan, Utah. She is currently the chair of the Paralegal Division of the Utah State Bar.



Things like remembering that while we don't disagree that paralegals are miracle workers, they are still human, and humans err. Stop being afraid of making mistakes, mistakes are how we learn. Remember that good communication with attorneys will help you prioritize the work effectively. Do not be afraid to speak up, as quietly stewing about how overwhelmed you are is not effective. Make good daily lists, sorted by priority, and check items off as they are completed. Not only do good lists help you stay organized, but doing this serves as a reminder that you have accomplished a lot. Getting out of your chair every hour and walking around the office helps to get the blood flowing. Taking long, deep breaths, for ten seconds at a time when feeling anxious, calms your nervous system. If the weather is nice outside, use part of your lunch hour for an outdoor walk to help clear your head. Try to avoid junk food in the middle of the day, otherwise you'll crash around 3:00 p.m. Finding a quiet place to stretch for ten minutes a few times a day helps relieve muscle fatigue. You do not need to be a yoga master to learn three or four simple body stretches that relieve tension. Finding things job-related that give you joy and focusing on those things whenever you get the chance, helps remind you why you like your job. Brilliant stuff, right?

I talked to paralegals about home life, and how they are able to keep it all together outside of the job. Handy tips like utilizing grocery pick-up services most stores are offering now (maybe one of the few upsides to Covid-19) or taking hot baths with essential oils or

soothing bath salts. Limiting time on social media, eating healthy foods, letting your mind wander while painting, drawing, reading, or sewing. Doing yard work, horticulture, fishing, hiking, yoga, going to the gym, getting frequent massages. Listening to podcasts or audiobooks, and cooking, were common suggestions for relieving stress and clearing the mind of all things work-related.

One topic that garnered responses that were all over the place was, how to avoid allowing work to infiltrate personal time. Nearly every paralegal I talked to has some method of checking their work email at home, whether it's on a home computer or laptop, smartphone or tablet. In some cases it was all of those things. Some paralegals told me that if they do not have access to their work email, and do not check it frequently (some every few hours while at home), they feel panicked. Others had set clear boundaries for themselves with respect to checking work email. Turning off notifications was a common solution, making the act of checking work email a conscious one. Some like myself, take the most frequently used personal device (a smartphone) and choose to not have work email go to that device at all, instead only allowing work email to go to other home devices (in my case an iPad and a laptop), with notifications turned off. The issue of work-related texts and calls during off-hours had a similar tone. This was an interesting discussion. The idea that paralegals know they need to make a conscious effort every day to escape their work in the off-time, yet feel panic when they can't keep tabs on that same work 24/7, begs the question: is there a solution?

I'm no expert, I only know what works for me. But I like to think a good strategy is to remember to choose yourself. Remember that you matter. Your health matters. There is a saying, something like, "you can't take care of others if you do not take care of yourself." And how true is that? Do cars run on empty gas tanks? What good are we to others if we run ourselves ragged? I get it. All of this is easier said than done. And it is true that in the heat of the chaos at work, it is pretty hard to remember to practice some form of self-care. If someone had told me ten years ago that I would actually enjoy wearing a device on my wrist that tells me every hour to get up and walk around for a minute, I would have laughed. What an absurd idea; that a device would compel a perfectly capable adult to stand up. Yet as I sit here now rambling on, the thing is telling me, "time to stand." Hey, whatever works.

Perhaps the most valuable piece of advice: do not be afraid to seek outside help from a mental health professional if that help is needed. Hang in there. Choose you. Your physical and mental health matter. And keep up the good work.

Annual Paralegal Day Luncheon

**For All Paralegals and
Their Supervising Attorneys**

Speaker TBA

May 20, 2021

Noon to 1:30 pm

**Salt Lake City
Marriott City Center
(220 South State Street)**



BAR POLICY: Before attending a seminar/lunch your registration must be paid.

SEMINAR LOCATION: All seminars and events are currently planned as online, Zoom events.

March 3, 2021 | 12:00 pm – 1:00 pm

The Real Property Section presents: Section 1031 Like-Kind Exchanges – Advanced Topics. Webinar.

March 5, 2021

Public Records Research & Compliance. Webinar.

March 17 & 18, 2021

6 hrs. CLE Credit, including at least 5 hrs. Ethics

OPC Ethics School. Webinar, three hours each day. Cost: \$100 on or before March 5, \$120 thereafter. Sign up at: opcutah.org.

March 18, 2021 | 12:00 pm – 1:00 pm

The Appellate Practice & Small Firm Sections present: Getting to Appeal II – From Judgment to Appeal. Webinar.

March 23, 2021 | 4:00 pm – 6:00 pm

2 hrs. CLE Credit

Litigation 101 Series – Direct Examination. Presented by Dan Garner and Gabriel White. Cost is \$25 for Young Lawyers, \$50 for all others.

March 25–27, 2021

Spring Convention in St. George – VIRTUAL EVENT.

April 20, 2021 | 4:00 pm – 6:00 pm

2 hrs. CLE Credit

Litigation 101 Series. Presented by Dan Garner and Gabriel White. Cost is \$25 for Young Lawyers, \$50 for all others.

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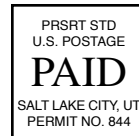
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