

Utah State Bar Commission

9:00 a.m. - Friday, January 24, 2014
S.J. Quinney College of Law



- * We will have 30 reserved stalls in the parking lot just east of the College of Law. Please tell the parking attendant that you are here for the Utah State Bar Commission Meeting.
- ** The meeting will be held in the Sutherland Moot Courtroom. The entrance to the Moot Courtroom is on the North side of the main foyer.

VISION OF THE UTAH STATE BAR

Lawyers creating a justice system that is understood, valued, respected, and accessible to all.

MISSION OF THE UTAH STATE BAR

To lead Utah lawyers in serving the public and the legal profession by promoting justice, professional excellence, civility, ethics, and respect for and understanding of the law.

2013 – 2014 COMMISSION PRIORITIES

1. Promoting public and lawyer education;
2. Promoting a fair and impartial judiciary;
3. Promoting access to justice and affordable legal services;
4. Studying the future of the practice of law in Utah and how it will be affected in the coming years by technology, market conditions, age, diversity, law school policies, etc., and how the Bar can provide additional technology training and career development for our membership;
5. Providing greater group benefits to members.

(over)

UTAH STATE BAR STATEMENT ON DIVERSITY AND INCLUSION

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 AWARDS

<u>AWARD</u>	<u>CHOSEN</u>	<u>PRESENTED</u>
1. Dorathy Merrill Brothers Award Advancement of Women in the Law	January/February	Spring Convention
2. Raymond S. Uno Award Advancement of Minorities in the Law	January/February	Spring Convention
3. Pro Bono Lawyer of the Year	April	Law Day
4. Distinguished Judge of the Year	June	Summer Convention
5. Distinguished Lawyer of the Year	June	Summer Convention
6. Distinguished Section of the Year	June	Summer Convention
7. Distinguished Committee of the Year	June	Summer Convention
8. Outstanding Pro Bono Service	September	Fall Forum
9. Distinguished Community Member	September	Fall Forum
10. Professionalism Award	September	Fall Forum
11. Outstanding Mentor	September	Fall Forum
12. Heart & Hands Award	October	Utah Philanthropy Day
13. Distinguished Service Award		As Needed
14. Special Service Award		As Needed
15. Lifetime Service Award		On Occasion

Utah State Bar Commission

**Friday, January 24, 2014
S.J. Quinney College of Law
Salt Lake City, Utah**

Agenda

- 1. 9:00 a.m. President's Report: Curtis Jensen**
 - 15 Mins.* 1.1 Report on Scheduled Meeting with Governor Herbert Today
 - 15 Mins.* 1.2 Review Legislative Breakfast/Bar Day/Phone Conference Calendar
 - 10 Mins.* 1.3 Review Luncheon with Past Presidents
 - 10 Mins.* 1.4 Review Spring Convention Planning
 - 10 Mins.* 1.5 Review 2014 Convention Planning
- 2. 10:00 p.m. Information Items**
 - 30 Mins.* 2.1 Commissioner Liaison Reports
- 3. 10:30 a.m. Action Items**
 - 15 Mins.* 3.1 Nominate Bar President-Elect Candidates (**Tab 1**)

10:45 p.m. Break

 - 15 Mins.* 3.2 Dorathy Merrill Brothers and Raymond Uno Awards (**Tab 2**)
 - 15 Mins.* 3.3 Select 2015 Summer Convention Location
- 4. 11:30 a.m. Discussion Items**
 - 20 Mins.* 4.1 Transitioning from Practice of Law Committee: Ben Hathaway
 - 10 Mins.* 4.2 Disaster Preparedness Committee Report: Michelle Harvey

12:00 noon Adjourn to Reception with Students

Consent Agenda (Tab 3)

1. Approve Minutes of December 6, 2013 Commission Meeting
2. Approve Applicants for the February 2014 Motion for Admission

Attachments (Tab 4)

1. December 2013 Financial Statements
2. Listing of Lawyer Legislators

(Over)

Calendar

2014

January 28	Breakfast with Lawyer/Legislators	7:30 a.m.	Capitol Multipurpose Room
January 28	Conference Call Re: Legislature	4:00 p.m.	
February 1	Election - Petitions, Statements, Photos Due		
February 4	Conference Call Re: Legislature	4:00 p.m.	
February 6-8	ABA Mid-Year Meeting		Chicago, Illinois
February 11	Conference Call Re: Legislature	4:00 p.m.	
February 18	Bar Day at the Legislature	9:00 a.m.	State Office Building Audit.
February 18	Conference Call Re: Legislature	4:00 p.m.	
February 25	Conference Call Re: Legislature	4:00 p.m.	
February 25-26	Bar Examination	8:00 a.m.	Law & Justice Center
March 7	Executive Committee	12:00 Noon	Law & Justice Center
March 13	SUBA Luncheon	12:00 Noon	St. George, Utah
March 13	Commission Meeting	1:00 p.m.	St. George, Utah
March 13-15	Spring Convention		St. George, Utah
March 20	Election Email Message Due		
March 26-29	Western States Bar Conference		Palm Desert, California
April 1	Election-Online Balloting Begins		
April 8-10	ABA Day in Washington		Washington, D.C.
April 15	Election-Online Balloting Ends		
April 16	Election-Ballots Counted		
April 18	Executive Committee	12:00 Noon	Law & Justice Center
April 25	Commission Meeting	9:00 a.m.	Law & Justice Center
May 5-6	Northwestern States Bar Conference		Seattle, Washington
May 19	Admission Ceremony	12:00 Noon	Abravanel Hall
May 29-31	Jackrabbit Bar Conference		Cody, Wyoming
June 6	Executive Committee	12:00 Noon	Law & Justice Center
June 13	Commission Meeting	9:00 a.m.	Law & Justice Center
July 11	Executive Committee	12:00 Noon	Law & Justice Center
July 16	Commission Meeting	1:00 p.m.	Snowmass Village, Colorado
July 16-19	Summer Convention		Snowmass Village, Colorado

Tab 1

H. Commission

1. Nomination of President-elect Candidate(s).

Balloting for nomination by the Board to run for the office of President-elect shall be by secret ballot except that Commissioners not in attendance at the meeting may submit their vote on the first round of balloting to the President or Executive Director. Any candidate receiving votes of a majority of the Commissioners casting ballots shall be nominated to run for the office of president-elect. Balloting shall continue until two nominees are selected except in cases where only one candidate is nominated by the Board.

(a) Initial Rounds.

Each Commissioner shall vote for two candidates on each round of balloting until at least one nominee is selected. In the event that three candidates in a round of balloting receive votes of a majority of the Commissioners casting ballots only the candidate receiving the highest number of votes shall be nominated and the two other candidates receiving a majority of the votes shall go to the second round of balloting.

(b) Subsequent Rounds.

In the rounds of balloting after one nominee has been selected, each Commissioner shall vote for one candidate.

Tab 2

UTAH BAR COMMISSION MEETING

AGENDA ITEM

Title: Dorathy Merrill Brothers Award Selection

Item: 3.1

Submitted by: John Baldwin

Meeting Date: January 24, 2014

ITEM/ISSUE:

To select the 2014 Dorathy Merrill Brothers Award recipient for the Advancement of Women in the Legal Profession.

CRITERIA:

Professionalism; Public Service; Public Dedication; Enhance Administration of Justice; Enhance the Delivery of Legal Services; Improve the Legal Profession; Encouraging New Efforts; Engaged in Significant Activity on Behalf of the Advancement of Women

NOMINEES:

PAST RECIPIENTS AND NOMINEES:

Past Recipients		Other Nominations That Year
2013	Charlotte L. Miller	Lori Nelson
2012	Hon. Sandra N. Peuller	Kelly De Hill, Elizabeth Dunning, Jennifer Lee, Lori Nelson
2011	Lauren I. Scholnick	
2010	Evelyn J. Furse Melanie J. Vartabedian Lisa A. Yerkovich	Joanna Sagers, Rashelle Perry, Kathy Dryer
2009	Hon. Carolyn B. McHugh	Lori Nelson
2008	Constance Lundberg, Susan Peterson	Steven Waterman
2007	Irene Warr	Kate Toomey; Christine Fitzgerald Solits, Irene Warr
2006	Janet H. Smith	Hon. Carolyn McHugh; Julie K. Morriss
2005	Annette W. Jarvis	Michaela D. Andruzzi; Ellen O'Hara
2004	Paul M. Warner	Commissioner Susan Bradford; Charlotte Miller
2003	Denise Dragoo	Nelda Bishop, Kristen Clayton, Bonnie Mitchell, Debra Moore and Judi Gretta Sorensen
2002	Hon. Pamela T. Greenwood	Karin Hobbs
2001	Laura M. Gray	Hon. Tina Campbell; Laura M. Gray; Patricia M. Leath; Hon. Pamela Greenwood; Charlotte Miller; and Marilu Peterson (non-lawyer)
2000	Katherine D. Pullins (non-lawyer)	Hon. David K. Winder
1999	Rosalie M. Reilly	
1998	James B. Lee	Attorney General Jan Graham; Hon. Pam Greenwood, Glenn C. Hanni; Hon. Leslie A Lewis; Patricia M. Leith,; Hon. Kay Lindsay; Charlotte L. Miller; Toni Marie Sutliff; Irene Warr
1997	Anne Milne	
1996	Patricia W. Christensen	
1995	Hon. Christine M. Durham	

INFO ONLY:

DISCUSSION:

ACTION NEEDED: X

**UTAH BAR COMMISSION MEETING
AGENDA ITEM**

Title: Raymond S. Uno Award Selection

Item: 3.1

Submitted by: John Baldwin

Meeting Date: January 24, 2014

ITEM/ISSUE:

To select the 2014 Raymond S. Uno Award recipient for the Advancement of Minorities in the Legal Profession.

CRITERIA:

Professionalism, Public Service, Public Dedication and Substantial Contributions to the Bar have Significantly Enhanced the Legal Profession, the Delivery of Legal Services, the Practice of Law and the Administration of Justice; Engaged in Significant Activity for the Advancements of Minorities in the Field of Law – not just Good Works; Active in the Minority Community; Active Role in the Minority Bar Association

NOMINEES:

PAST RECIPIENTS AND NOMINEES:

Past Recipients		Other Nominations That Year
2013	Cecilia Romero	
2012	Prof. David Dominguez	S. Grace Acosta, Augustus Chin, Hakeem Ishola, Doug Matsumori, Darold J. McDade, Sean Reyes, J. Craig Swapp, Phillip Uipi, Hon. Andrew Valdez
2011	Nathan D. Alder	
2010	Trystan Smith	Carlos Esqueda
2009	Cheryl Miyuki Mori	
2008	Su Chon	
2007	Judge Glen K. Iwasaki	Judge Glen K. Iwasaki; Sean D. Reyes
2006	Mona Burton	Douglas Matsumori
2005	Cheryl D. Luke	Filia H. "Phil" Uipi
2004	Marlene Gonzalez	Barbara Melendez; Filia H. "Phil" Uipi
2003	F. John Hill	James C. Bradshaw; Gus Chin; Barbara Dickey; Marlene Gonzalez; Darold J. McDade; Mark R. Moffat
2002	Robert L. Flores	Darold J. McDade
2001	Hon. Tyrone E. Medley	Gus Chin
2000	Sherrie Hayashi	
1999	Jimi Mitsunaga	
1998	Hon. Raymond Uno	
1997	Michael N. Martinez	
1996	John Martinez	
1995	Hon. William A. Thorne, Jr.	

INFO ONLY:

DISCUSSION:

ACTION NEEDED: X

Tab 3

UTAH STATE BAR
BOARD OF BAR COMMISSIONERS
MINUTES

DECEMBER 6, 2013

UTAH LAW AND JUSTICE CENTER

- In Attendance:** President Curtis M Jensen and Commissioners: Steven Burt, H. Dickson Burton, Kenyon Dove, Hon. Evelyn Furse, Mary Kay Griffin, Susanne Gustin, Michael Leavitt, John Lund, Herm Olsen, Rob Rice, and Tom Seiler.
- Ex-Officio Members:** Robert Alder, Nate Alder, Heather Farnsworth, Carl Hernandez for James Rasband, Lori Nelson, Jesse Nix, Lawrence Stevens, and Gabe White. Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Katherine A. Fox, and Supreme Court Liaison Tim Shea.
- Not in Attendance:** Commissioners: James D. Gilson, Janise Macanas, and Angelina Tsu. Ex-Officio Members: Robert Adler, Danielle Davis, and Margaret Plane.
- Also in Attendance:** Sean Toomey, Utah State Bar Communications Director, Lincoln Mead, Bar IT Department, and Scott Sabey, Bar's lobbyist.

Minutes:

1. President's Report: Curtis Jensen

1.1 Recognize Adam Bevis and Sharadee Fleming at 10 Year Anniversary

Curtis introduced Adam and Sharadee in recognition of their 10 year anniversary at the Bar. Commissioners congratulated both of them and John presented them with gift baskets.

1.2 Database Committee Report: Hon. David Nuffer (Tab 1)

Curtis introduced this topic by stating that we are at a critical juncture and a decision needs to be made sooner rather than later about replacing our database. Bar Alliance will not be servicing, maintaining or hosting the Bar's current system in a few months. Judge David Nuffer who chaired this Committee appeared to explain the Committee's thinking and recommendations on the Bar's database system. He began his presentation by noting that this was probably as big of decision that the Bar would ever make. There is an extremely broad range of programs from which to choose coupled with the need to provide remarkable level of service

through out the state. We've looked at reducing services from time to time but this approach doesn't comport with what we are obligated to do and what we want to do. With software, the price increases with more specialization and it is already expensive. David drew a comparison: there are 94 federal district courts and they spend millions of dollars developing their databases. It takes 40 programmers to maintain the system and it's very, very expensive. The long term prognosis is not good for their system.

Our needs fall into three areas: admissions software (\$52,000); OPC software (\$150,000); and general management software for everything else such as licensing, MCLE, CLE, etc. (\$300,000). In response to questions, he noted that even if Bar Alliance wasn't discontinuing their database service, there are real advantages in moving to other systems rather than buying and then trying to make Bar Alliance work for us. Working from scratch hiring programmers in-house isn't a good idea, either. After careful and long-term evaluation, the Committee recommends purchasing suitable systems off the shelf and then customizing them for our needs. The Committee is recommending an overall management program called Euclid with two other subsidiary systems for admissions and OPC.

Lincoln Mead did a "walk through" of the current system we have and said that the three new systems would be fully integrated. In response to Rob's questions, Lincoln said that making improvements would be easier and less expensive than with Bar Alliance. In the admissions area, we would have more control and it would allow applicants to do more "self-service." John Lund observed that when the courts moved to e-filing, they saw significant savings with cutting staff. He inquired if the potential was here as well. John Baldwin said that we would review that aspect.

John Baldwin said that we had done our homework and there has been good experience with other bars with the three vendors we are considering. We spend more upfront on the new programs, but actually less money over the next 10 years. Dave added that there is no single vendor that can do it all like Bar Alliance purported to do. Moreover, he said that a single developer, like Bar Alliance, had too many risks involved. Again, taking over and maintaining Bar Alliance is costly and risk prohibitive, in the Committee's opinion. As to cost of the management system, that bid included transition costs. Lincoln interjected that we would have a double fire wall in-house with the new database.

Eve Furse would like a self-reporting feature CLE included in the new system. Another inquiry focused on any available discounts. If the two other systems are incorporated, Euclid would offer a starting 22% discount potentially increasing to 35%. John Lund wanted to know the impact on Bar staffing and Curtis asked if there were costs that haven't been

identified. Dave replied that they had reviewed that possibility and didn't think so and Lincoln agreed. Lincoln believes that we will not need to add to our technology staff consisting of himself and Summer Shumway. Curtis asked about the impact on our members which the Committee believed would be negligible.

Rob Rice wanted to know where the money would come from to pay for these new systems. John Baldwin responded that 20% of it was already budgeted and \$400,000 would come out of our substantial cash surplus. He reminded Commissioners that we still have \$1.2 million in the bank. Lincoln added that we could make the Euclid payments in six increments. John Lund had a number of questions about 20% of the budget already having been allocated towards this purchase. He asked if \$650,000 was the best number we could arrive at. John Baldwin replied that we current pay Bar Alliance \$100,000 a year so that amount is already in the budget. Bar dues should not go up with this purchase.

1.3 Report on Deregulation of Court Reporters

Last year there were two bills involving court reporters at the legislative session. One of the issues was whether if all a reporter was doing was videotaping a deposition, was state licensure necessary? This issue doesn't really affect the courts since they don't use court reporters except for capital cases. As a consequence, the courts do not want to regulate court reporters and instead, prefer that DOPL oversee their activities. The other issue, and not a particularly significant one, addressed increasing rate charges per page of the deposition or proceeding. The current rule prohibits legislators from naming a bill a title that doesn't reflect the nature of the bill and there are 37 pending bills with a relevant title involving court reporters. At this point, there are no more details. Katherine Fox was asked to find a Utah Supreme Case involving Derrick/Derek Brown that may have addressed some aspect of the court report issue.

1.4 Legislative Session Preparation

Scott Sabey reported on the legislative session preparation. He said that we were in the process of setting up the first meeting for the upcoming session. There are currently between 800-1200 bill requests. Scott continually reviews the requests, attends the Governmental Relations Committee meetings, and provides assistance to the Bar as needed. We review the pending bills objectively rather than subjectively. Scott is the first filter before the bills are turned over to the appropriate sections that have the specific expertise. The Supreme Court has its own lobbyist (Rick Schwermer). Scott closed his report by noting that there is a task force to examine the circuit court system that Utah previously discarded. He invited Commissioners to attend the first Governmental Relations meeting in January.

John Lund observed that there is a great need to maintain diligence and awareness of judicial nominees as well as the court system changes that the legislative task force has taken up. Nate Alder remarked that the legislative breakfast is a really important education opportunity. John Baldwin interjected that the legislative lawyer breakfast will be held on January 23rd this year. Nate also believes it is time to move beyond Utah issues to ones of international and federal nature. Curtis asked that Commissions please plan to attend the breakfast to foster those important legislator relationships. He also said that we had distributed form letters to be personalized as desired to be sent to Commissioners' respective legislators.

1.5 Report on Meeting with Ron Gordon of Commission on Criminal Juvenile Justice

John Baldwin reported that we have some concerns about the judicial appointment process. Ron Gordon is the Governor's consultant to legislative counsel and we wanted him to know that we are supportive of the Governor's efforts relating to the process. We want to help ensure fairness as well as promote a sense of encouragement for potential judicial applicants.

1.6 Report on Meeting with Terrie McIntosh, Chair, Ethics & Discipline

Curtis, Jim Gilson and John Baldwin talked with Terrie McIntosh during the Fall Forum about roles and responsibilities of the Ethics & Discipline Committee. More specifically, they discussed the Committee being able to issue public reprimands. The group believes that public reprimands should only be issued by a court. Terrie will consider the group's concerns and the allegation that this process does not provide sufficient due process for the lawyer.

1.7 Report on Meeting with Rules Committee on Advertising Rules

John Baldwin reported that Katherine Fox, Rob Jeffs and he attended the most recent meeting with the Advisory Committee on the Rules of Professional Conduct where the pending advertising rules were discussed. Steve Johnson, who chairs this Committee, said further meetings would be necessary but that he appreciated the input, particularly from Rob who answered a number of questions and provided a lengthy background.

1.8 Report on Disaster Preparedness Committee: Michelle Harvey

Postponed.

NEW: Herm Olsen reported that at a recent Cache County Bar Association meeting at which John Baldwin and Lincoln Mead presented, there were over 40 lawyers who attended. Those members were appreciative and there was an opportunity to ask questions about “who we are.” Curtis noted that there is an ongoing invitation for Commissioners to visit the outlying areas and speak.

1.9 Report on YLD “30 for 30” Lawyer Referral Program: Michelle Harvey

Gabe White reported on this topic in lieu of Michelle Harvey. This new Young Lawyers Division (YLD) program enables a potential client to seek 30 minutes of legal advice for \$30. It draws from members of the YLD. Curtis opined that there may be concerns re liability but Gabe responded that it’s not really a Bar program but a funnel for private and for profit consultations. Rob Rice further inquired if the program has legal malpractice implications for the Bar but again, Gabe responded that it’s not a true Bar referral service. Rob, Michelle Harvey and Curtis will discuss this program in more detail at a later date.

2. Action Items

2.1 Approve Database Committee Report

John Lund moved to approve the Committee’s recommendations and without financing the purchases, along with reviewing staff positions for possible changes. Eve Furse seconded the motion which then passed unopposed.

2.2 Appointment to Children’s Justice Board (Tab 2)

We have been provided with six criminal defense bar names for this open appointment: C. Markley Arrington, Trevor A. Bradford, David W. Brown, Lisa Crawford, Tasha M. Williams, and Ron D. Wilkinson. After much discussion, **Markley Arrington was nominated by Kenyon Dove. The motion was seconded by John Lund and passed without dissent.**

2.3 Public Education Budget: Sean Toomey

Last month the Commission whittled down various ideas for the public education billboards. Changes were suggested of which Sean took note but the remaining task is to approve the budget for the billboards. No more than \$60,000 was initially suggested. The Executive Committee has recommended a mix of medium and large billboards to reach 90% of the population where the average person sees the billboard at least 20 times. They also recommended placing billboards around the state in cities and along the freeways. The money is already incorporated into the Bar’s

budget if the expenditure is approved. Curtis noted that each billboard is subject to Commission approval and we could start as early as March.

Dickson moved to approve a \$60,000 budget along with the parameters discussed, and Herm Olsen seconded the motion which passed unopposed.

3. Information Items

3.1 Modest Means Program Report: John Lund

Postponed.

3.2 Judicial Council Report: John Lund

Postponed.

NEW: Larry Stevens announced that ABA Day in Washington, D. C., was scheduled for April 8th. Larry received a call from Linda Kline who is the chair of ABA Day, encouraging our Bar's participation in this annual event. He opined that it was important to have someone attend to represent Utah. He described the agenda for those in attendance which always includes requesting more funding for legal services. Nate Alder added that although the event was disappointing last year, it doesn't mean that we don't have significant impact with our input. He believes that we should "double down" on our investment. Lori Nelson interjected that we need to start planning now if we are going to attend and obtaining specific information on Utah to highlight the Utah issues we care about. Nate said that funding for public defenders will certainly be a topic.

Dean Robert Adler observed that we can meet with our congressional representatives while they are in Utah and perhaps have more significant one-on-one time with them. Curtis said that was an important aspect as they did not have the opportunity to even meet with some representatives last year. Mike Leavitt said that while we probably could have a larger contingency and attend, perhaps we should follow Dean Adler's suggestion. Curtis said he would take the issue under advisement.

HANDOUTS DISTRIBUTED AT MEETING:

1. List of Database Questions (Jim Gilson) and Answers (Lincoln Mead)
2. Media Coverage from October 22 to December 5, 2013 (Sean Toomey)

ADJOURNED: 1 p.m.

CONSENT AGENDA:

1. Approve Minutes of October 25, 2013 Commission Meeting
2. Approve Client Security Fund Recommendations.
3. Approve Formal Policy on E-Mail Distributions

BOARD OF BAR COMMISSIONERS
APPLICANTS ELIGIBLE FOR ADMISSION
FEBRUARY 2014

JAMES R. BALMFORTH
BRIAN BAXTER
MARGARET N. BOYLE
ERIC B. BROWN
MICHAEL W. BROWN
JOSEPH R. BRUBAKER
JACOB R. BURGESS
BRENT D. CHICKEN
HEATHER M. CRAIN
JEREMY D. DEUS
SANDRA L. DENTON
CLINTON S. ENSIGN
AMY L. ERICKSON
NICHOLAS T. HADERLIE
CHRISTINA M. HARPER
JASON D. HAYWARD
ANDRES HERMOSILLO
JAMES F. JACOBSON
VERONIQUE P. JARRELL-KING
SONDRA P.M.L. KAHAWAII
KENJI JOHN KAWA
CONRAD S. KEE
JOSHUA ROBERSON KENNEDY
JONATHAN G. KOEHLE
NATHAN J. KOPP
JASON KRAUSE
JAMES E. LEDBETTER
ASHLEY F. LEONARD
SZONJA G. LUDVIG
STEVE LEWIS LUNDWALL
MILES M. MASOG
THEO MICHAEL MATHEWS
BRENT J. MATTHEWS
KATHLEEN M. MCROBERTS
PAUL J. MORTON
JACOB T. MUKLEWICZ
ANGELA MARIE OTTO
NEAL W. PEARSON
GREGORY DIMITRI PENKOWSKY
CHRISTOPHER R. REEVES

JULIE A. SLATER
PETER K. SMYTH
KURT CHRISTIAN TEMPLE
MAUREEN TOOMEY
WILLIAM F. TUETING
BRIGHAM LARSON UDALL
STEPHEN M. VINCENT
CHRISTOPHER MICHAEL WALLACE
BRUCE H. WHITE
BENJAMIN E. WICK
PAUL G. YALE
ADAM R. YOUNG

HOUSE COUNSEL
DAVID T. GARBETT
EDWARD J. HOFFMAN
KIRK L. KIMBER
TERRY R. SOMERS
KENTON M. WALKER

Tab 4

12:21 PM

01/08/14

Accrual Basis

Utah State Bar

Balance Sheet

As of December 31, 2013

	Dec 31, 13	Nov 30, 13	Dec 31, 12
ASSETS			
Current Assets			
Checking/Savings			
1010 · Petty Cash	625	625	625
1011 · Cash in Bank	32,090	48,633	48,745
1060 · ILM Invested Funds Market Value	4,412,784	4,859,509	4,584,523
Total Checking/Savings	4,445,499	4,908,767	4,633,893
Accounts Receivable			
1071 · Accounts receivable	12,629	8,529	24,148
Total Accounts Receivable	12,629	8,529	24,148
Other Current Assets			
1070a · Other Accounts Receivable	(170)	(174)	86
1089 · Unbilled tenant costs	14,155	25,427	(2,320)
1100 · Prepaid Expense	61,151	72,944	64,569
1919 · Section ILM net earn rcvble	4,729	4,739	4,389
1920 · A/R - Section Funds	9,278	48,537	26,237
Total Other Current Assets	89,143	151,473	92,963
Total Current Assets	4,547,271	5,068,769	4,751,003
Fixed Assets			
1500 · Property & Equipment	3,828,053	3,824,229	3,211,276
1550 · Accumulated Depreciation	(3,077,857)	(3,071,246)	(3,019,222)
1600 · Land	633,142	633,142	633,142
Total Fixed Assets	1,383,337	1,386,124	825,195
TOTAL ASSETS	5,930,608	6,454,893	5,576,199
LIABILITIES & EQUITY			
Liabilities			
Current Liabilities			
Other Current Liabilities			
2010 · Other Accounts Payable	8,896	180,919	179,488
2100 · Accrued Payables	316,431	313,239	321,544
2350 · Capital Lease Obligations-ST	2,710	2,710	1,844
2920 · A/P - Section Funds	360	120	5,870
Total Other Current Liabilities	328,396	496,988	508,745
Total Current Liabilities	328,396	496,988	508,745
Long Term Liabilities			
2400 · Capital lease obligations	7,386	8,416	12,156
Total Long Term Liabilities	7,386	8,416	12,156
Total Liabilities	335,783	505,404	520,901
Equity			
3500 · Unrestricted Net Assets (R/E)	3,698,625	3,698,625	2,955,918
3510 · Fund Balance - Beginning			36,591
Net Income	1,896,200	2,250,863	2,062,788
Total Equity	5,594,825	5,949,488	5,055,298
TOTAL LIABILITIES & EQUITY	5,930,608	6,454,893	5,576,199

Utah State Bar
Summary Income Statement
December 31, 2013

	Year to Date			2013/14
	Actual	Budget	Variance Fav/(Unfav)	Total Budget
<u>Revenue</u>				
Licensing	\$ 3,877,358	\$ 3,813,268	\$ 64,070	\$ 3,886,900
Admissions	175,382	161,848	13,534	473,060
NLTP	58,250	45,969	12,281	80,600
Mgt - Service	3,426	9,885	(6,459)	17,400
In Kind Revenue	1,127	1,167	(40)	3,200
Mgt - Interest & Gain	19,551	7,187	12,364	15,100
Property Mgt	157,287	123,215	34,072	295,100
OPC	4,313	2,059	2,254	12,500
CMIS/Internet	300	1,348	(1,048)	3,000
CLE	199,036	110,510	88,526	383,000
Summer Convention	147,682	184,200	(36,518)	184,200
Fall Forum	81,275	89,100	(7,825)	89,100
Spring Convention	5,075	4,625	450	128,700
Bar Journal	70,117	59,360	10,757	132,100
Committees	-	33	(33)	100
Member Benefits	9,684	4,914	4,770	6,900
Section Support	-	-	-	84,348
Access to Justice	6,818	-	6,818	-
Commission/Sp Proj	6,160	-	6,160	-
Young Lawyers Division	50	-	50	-
Total Revenue	\$ 4,822,891	\$ 4,618,708	\$ 204,183	\$ 5,795,308
<u>Expenses</u>			(Fav)/Unfav	
Licensing	60,281	74,994	(14,713)	170,683
Admissions	251,800	250,397	1,403	450,698
NLTP	50,812	50,038	774	98,632
Bar Mgt	391,897	420,387	(28,490)	655,721
Property Mgt	248,422	228,253	20,169	496,767
OPC	591,101	593,422	(2,321)	1,178,401
General Counsel	108,889	160,964	(52,075)	300,039
Computer/MIS/Internet	90,745	110,863	(20,118)	200,265
CLE	186,004	118,077	67,927	369,805
Summer Convention	236,016	210,577	25,439	224,267
Fall Forum	83,893	83,588	305	87,761
Spring Convention	11,741	12,459	(718)	81,975
Bar Journal	91,395	83,682	7,713	181,418
Committees	87,612	87,633	(21)	119,017
Member Benefits	69,453	96,109	(26,656)	177,155
Section Support	45,534	39,554	5,980	84,348
Consumer Assistance	35,016	28,004	7,012	61,858
Access to Justice	80,203	77,130	3,073	184,884
Tuesday Night Bar	18,969	4,747	14,222	13,070
Legislative	193	6,155	(5,962)	64,405
Commission/Sp. Proj	106,753	91,196	15,557	166,167
Public Education	53,862	44,362	9,500	146,922
Young Lawyers Division	26,100	24,012	2,088	48,000
Total Expenses	\$ 2,926,691	\$ 2,896,603	\$ 30,088	\$ 5,562,258
Net Revenue/(Expense)	\$ 1,896,200	\$ 1,722,105	\$ 174,095	\$ 233,050
Add: Depreciation	28,849	20,232	8,617	55,363
Cash Increase/(Decrease) from Operations	\$ 1,925,049	\$ 1,742,337	\$ 182,712	\$ 288,413
Other Uses of Cash				
Change in Assets/Liabilities	(246,032)	(246,032)	-	
Capital Expenditures	260,694	550,000	(289,306)	550,000
Net Change in Cash	\$ 1,418,323	\$ 946,305	\$ 472,018	\$ (261,587)

The Utah State House of Representatives



Patrice Arent (D) – District 36 (Elected to House: 2010. Prior service in Utah House & Senate: 1/1997–12/2006)

Education: B.S., University of Utah; J.D., Cornell University

Committee Assignments: Appropriations – Business, Economic Development & Labor. Standing – Education; Judiciary; Ethics; Legislative Information Technology Steering.

Practice Areas: Adjunct Professor, S.J. Quinney College of Law – University of Utah. Past experience: Division Chief – Utah Attorney General's Office, Associate General Counsel to the Utah Legislature, and private practice.



Derek E. Brown (R) – District 49 (Elected to House: 2010)

Education: B.A., Brigham Young University; J.D., Pepperdine Law School

Committee Assignments: Appropriations – Higher Education. Standing – Vice-Chair of Rules Committee; Business/Labor; Law Enforcement.

Practice Areas: General Business, Education, Technology, and Intellectual Property.



F. LaVar Christensen (R) – District 32 (Elected to House: 2002)

Education: B.A., Brigham Young University; J.D., University of the Pacific, McGeorge School of Law

Committee Assignments: Appropriations – Public Education. Standing – Judiciary; Vice Chair, Health & Human Services.

Practice Areas: Mediator and Dispute Resolution, Real Estate Development and Construction, Civil Litigation, Appeals, Family Law, General Business, and Contracts.



Brian Greene (R) – District 57 (Elected to House: 2012)

Education: B.A., Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Committee Assignments: Appropriations – Natural Resources, Agriculture & Environmental Quality. Standing – Health & Human Services; Judiciary.

Practice Areas: Administrative Law, Government Affairs & Public Policy, and Commercial Real Estate Transactions.



Craig Hall (R) – District 33 (Elected to House: 2012)

Education: B.A., Utah State University; J.D., Baylor University

Committee Assignments: Appropriations – Executive Offices & Criminal Justice. Standing – Judiciary; Political Subdivisions.

Practice Areas: Litigation and Intellectual Property.



Kenneth R. Ivory (R) – District 47 (Elected to House: 2010)

Education: B.A., Brigham Young University; J.D., California Western School of Law

Committee Assignments: Appropriations – Natural Resources, Agriculture & Environmental Quality. Standing – Vice Chair, Rules; Natural Resources, Agriculture & Environment; Vice-Chair, Government Operations.

Practice Areas: Mediation, General Business, Commercial Litigation, and Estate Planning.



Mike Kennedy (R) – District 27 (Elected to House: 2008)

Education: B.S., Brigham Young University; M.D., Michigan State University; J.D., J. Reuben Clark Law School, Brigham Young University

Committee Assignments: Appropriations – Public Education. Standing – Health & Human Services; Political Subdivisions.

Practice Areas: “Of Counsel,” Bennett Tueller Johnson & Deere



Brian King (D) – District 28 (Elected to House: 2008)

Education: B.S., University of Utah; J.D., University of Utah S.J. Quinney College of Law

Committee Assignments: Appropriations – Executive Offices & Criminal Justice. Standing – Ethics; Rules; Judiciary; Revenue & Taxation.

Practice Areas: Representing claimants with life, health, and disability claims; class actions; ERISA.



Daniel McCay (R) – District 41 (Appointed to House: 2012, Re-Elected 2012)

Education: Bachelors and Masters, Utah State University; J.D., Willamette University

Committee Assignments: Appropriations – Social Services. Standing – Education; Transportation.

Practice Areas: Real Estate Transactions, Land Use, and Civil Litigation.



Kay L. McIff (R) – District 70 (Elected to House: 2006)

Education: B.S., Utah State University; J.D., University of Utah S.J. Quinney College of Law

Committee Assignments: Appropriations – Higher Education. Standing – Judiciary; Revenue & Taxation.

Practice Areas: Former presiding judge for the Sixth District Court, 1994–2005. Before his appointment, he had a successful law practice for many years, most recently as a partner in the McIff Firm.



Mike McKell (R) – District 66 (Elected to House: 2012)

Education: B.A., Southern Utah University; J.D., University of Idaho

Committee Assignments: Appropriations – Natural Resources, Agriculture & Environmental Quality. Standing – Natural Resources, Agriculture & Environment; Public Utilities & Technology.

Practice Areas: Personal Injury, Insurance Disputes, and Real Estate.



Merrill Nelson (R) – District 68 (Elected to House: 2012)

Education: B.S., Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Committee Assignments: Appropriations – Executive Offices & Criminal Justice; Retirement. Standing – Retirement & Independent Entities; Natural Resources, Agriculture & Environment; Economic Development & Workforce Services.

Practice Areas: Kirton McConkie – Appellate and Constitution, Risk Management, Child Protection, Adoption, Health Care, and Education.



Kraig J. Powell (R) – District 54 (Elected to House: 2008)

Education: B.A., Willamette University; M.A., University of Virginia; J.D., University of Virginia School of Law; Ph.D., University of Virginia Woodrow Wilson School of Government

Committee Assignments: Appropriations – Public Education; Retirement. Standing – Retirement & Independent Entities; Education; Government Operations.

Practice Areas: Powell Potter & Poulsen, PLLC; Municipal and Governmental Entity Representation; and Zoning and Land Use.



Lowry Snow (R) – District 74 (Appointed to House: 2012; Re-Elected 2012)

Education: B.S., Brigham Young University; J.D., Gonzaga University School of Law

Committee Assignments: Appropriations – Business, Economic Development & Labor. Standing – Education; Judiciary.

Practice Areas: Snow Jensen & Reece – Real Estate, Civil Litigation, Business, and Land Use Planning.



Keven J. Stratton (R) – District 48 (Appointed to House: 2012, Re-Elected 2012)

Education: B.S., Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Committee Assignments: Appropriations – Executive Offices & Criminal Justice. Standing – Education; Law Enforcement & Criminal Justice.

Practice Areas: Stratton Law Group PLLC – Business, Real Estate, and Estate Planning.



Earl Tanner (R) – District 43 (Elected to House: 2012)

Education: B.S., University of Utah; J.D., University of Utah S.J. Quinney College of Law

Committee Assignments: Appropriations – Social Services. Standing – Transportation; Revenue & Taxation.

Practice Areas: Tanner & Tanner, P.C.: Trusts and Estates, Real Estate, Tax, Corporate, and Litigation.

The Utah State Senate



Lyle W. Hillyard (R) – District 25 (Elected to House: 1980; Elected to Senate: 1984)

Education: B.S., Utah State University; J.D., University of Utah S.J. Quinney College of Law

Committee Assignments: Appropriations – Executive (Co-Chair), Public Education; Infrastructure & General Government. Standing – Government Operations & Political Subdivisions; Judiciary, Law Enforcement & Criminal Justice; Ethics.

Practice Areas: Family Law, Personal Injury, and Criminal Defense.



Mark B. Madsen (R) – District 13 (Elected to Senate: 2004)

Education: B.A., George Mason University, Fairfax, VA; J.D., J. Reuben Clark Law School, Brigham Young University

Committee Assignments: Appropriations – Public Education; Executive Offices & Criminal Justice. Standing – Education; Judiciary, Law Enforcement & Criminal Justice; Rules.

Practice Area: Eagle Mountain Properties of Utah, LLC.



Stephen H. Urquhart (R) – District 29 (Elected to House: 2000; Elected to Senate: 2008)

Education: B.S., Williams College; J.D., J. Reuben Clark Law School, Brigham Young University

Committee Assignments: Appropriations – Public Education; Higher Education. Standing – Education; Judiciary, Law Enforcement & Criminal Justice.



John L. Valentine (R) – District 14 (Elected to House: 1988; Appointed to Senate: 1998; Elected to Senate: 2000)

Education: B.S., Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Committee Assignments: Appropriations – Natural Resources, Agriculture & Environmental Quality; Higher Education. Standing – Business & Labor; Revenue & Taxation; Rules Chairman.

Practice Areas: Corporate, Estate Planning, and Tax.



Todd Weiler (R) – District 23 (Appointed to Senate: 2012; Re-Elected: 2012)

Education: Business Degree, Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Committee Assignments: Appropriations – Social Services. Standing – Business & Labor; Judiciary, Law Enforcement & Criminal Justice; Retirement & Independent Entities; Rules.

Practice Areas: Civil Litigation and Business Law.



Media Coverage, November 19, 2013 to January 16, 2014

Print (copies follow):

13-Premier Attorney at Law Snowmass

13-Vol. 1 No.2 Attorney at Law HelpRISE Jensen

13-11-19 Record Fall Forum Recap #1

13-11-22 Record Fall Forum Recap #2

13-12-24 Record Wills for Heroes

Online (copies follow):

14-01-16 BYU Law Thompson

UTAH STATE BAR MEMBERS WORKED & PLAYED HARD AT SNOWMASS

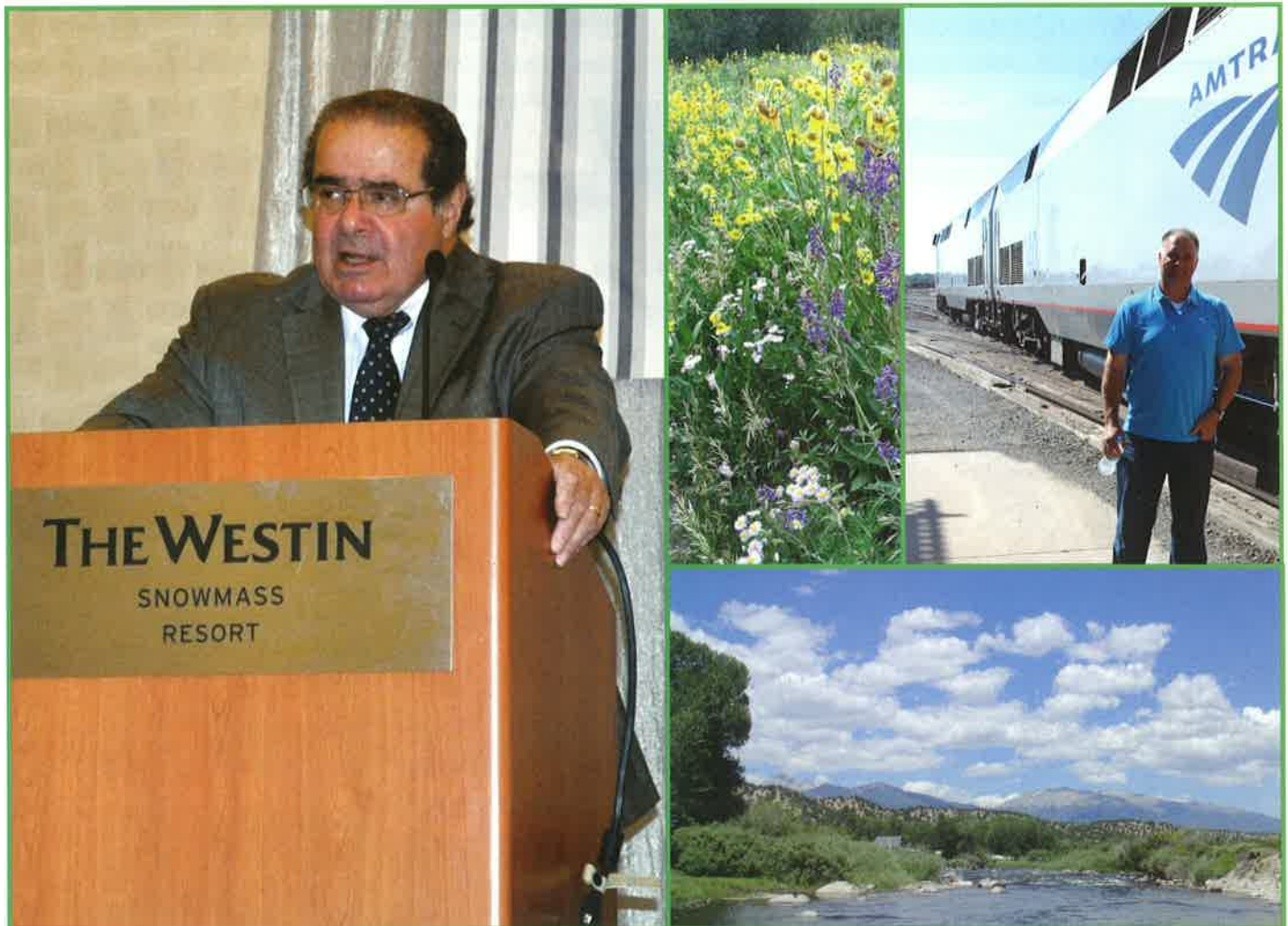
Utah State Bar members gathered at Snowmass's 8,000 foot elevation in July to enjoy some CLE and cool temperatures. Responding to a post-convention survey, a member said, "These meetings are one of the few opportunities where attorneys and judges that might not normally interact have a chance to mingle and socialize. In my view this is very important for camaraderie and esprit de corps. Every year I run into people that I have not seen for years, and I meet new people from both large and small firms."

Two sessions inspired much comment: "Law, Justice, and the Holocaust: How the Courts Failed Germany" by Dr. William F. Meinecke was viewed as "a powerful message ... Scalia's follow up was also quite impactful." On a lighter note, Judge Kate Toomey and Dr. Stephen Nash entertained a full house focused on the question of who owns the past and what came out of the Snowmastodon dig.

Families rode the gondolas to a high-elevation party, where bikes, face painting, rock climbing, bounce houses, and plenty of green space allowed the kids to run free and enjoy the festivities. Members were also able to get out and about and enjoy the wild landscape.

New President Curtis Jensen addressed the convention after being sworn in. Also sworn in as commissioners were Kenyon Dove and Susanne Gustin, and, as president-elect, James D. Gilson. "This board of commissioners devotes countless hours working for justice, and I am fortunate to be associated with such an energetic and dedicated group," said Jensen.

The Utah State Bar will be returning to Snowmass for a second summer July 16-19, 2014.





TALK of the TOWN

AWARDS – ANNOUNCEMENTS – PRESS RELEASES – PROMOTIONS



Lindsay Nash

► The law firm of **Snow, Christensen & Martineau** is pleased to announce two new associates joining the firm. **Nathanael J. Mitchell** joins the firm as an associate with an interest in a wide range of practice areas, which include general civil litigation, white collar defense, commercial litigation, insurance defense, and government liability. Mitchell participates in the firm's data security law group, which consults clients on issues arising out of data breach vulnerability and cyber security law. **Lindsay K. Nash** also joins the firm as an associate. Since her clerkship with the firm in 2012, Nash has handled a variety of matters. Her practice areas of interest range from government liability, criminal defense, bankruptcy, commercial litigation, data security, and employment law.

► At its annual meeting, the American Bar Association recognized the **Utah State Bar young lawyers division** for its **Help RISE** project with a first place award of Achievement for Outstanding Activities & Accomplishments in the Service to the Public category. The project also received an Outstanding Public Service Project Award from the American Bar Endowment—an award given to only one service project a year.



Brent P. Lorimer



Rick D. Nydegger

► Three **Workman Nydegger** shareholders have been named 2014 Salt Lake City Lawyers of the Year by Best Lawyers. Managing shareholder **Brent P. Lorimer** is both intellectual property litigation and trademark law Lawyer of the Year. Founding shareholder **Rick D. Nydegger** is patent law Lawyer of the Year and **Thomas Vuksinick** is patent litigation Lawyer of the Year. Lorimer was also named by his peers as a Best Lawyer in the fields of patent and trademark law. John Stringham and Thomas R. Vuksinick were named as "Best Lawyers" in IP litigation.



Shauna Huston

► **Shauna Huston** has been named **Workman Nydegger's** new executive director. She is a certified legal manager, an Association of Legal Administrators designation, and has a senior professional in human resources (SPHR) management certification. In 2010, she was recognized by the National Association of Legal Administrators as one of the nation's top three legal administrators. **Ann Waters** was hired to establish Workman Nydegger's marketing and business development department. She has 14 years of legal services marketing experience and an MBA from the University of Utah.

► Three lawyers have joined **Workman Nydegger**. **Charles A. Meeker, Ph.D.** graduated from the Indiana University Maurer School of Law. He also has a bachelor's degree in biology from BYU.



John O. Carpenter



Angela L. Silvers



Sterling D. Fillmore

Sterling D. Fillmore graduated from the George Mason University of Law and from BYU with a bachelor's in physics.

John O. Carpenter

graduated from the S.J. Quinney College of Law at the U of U and has a bachelor's in physics from Bowdoin College. **Angela L. Silvers, Ph.D.** is now a patent agent at the firm. She earned her doctorate in organic chemistry from Princeton University and has a master's degree in chemistry from Princeton University.

► **Harry H. Souvall**, public lands section chief of the Utah attorney general's office has been named the 2013 Lawyer of the Year by the energy, natural resources & environmental law section of the Utah State Bar

► **Curtis M. Jensen**, one of the founding partners of **Snow Jensen & Reece, P.C.**, is the 2013-14 Utah State Bar president.

► **Women Lawyers of Utah (WLU)**



Judge Brooke C. Wells

had the record turnout and great attendance at their 2013 Annual Fall Retreat. We flew in nationally renowned speakers **Ellen Ostrow** and **Elizabeth Joliffe** who provided the attendees with excellent tips on how to be effective leaders, overcome barriers they may face in their profession, and how to advance wherever they are. WLU presented the 2013 Mentoring Award to **Judge Brooke Wells**; the newly established OWLS (Outstanding Women Lawyers Supporter) Award to **Durham Jones & Pinegar**; the Reva Beck Bosone Scholarship & Award (given by U of U's Women's Law Caucus) to **Nubia Pena**; and the Cora Snow Carleton Scholarship & Award (given by BYU's Women in the Law) to **Su'e Tervola**.

► **Fabian, Attorneys at Law** has earned 13 Metropolitan Rankings in the 2014 Best Law Firms report published by U.S. News Media Group and Best Lawyers.

► **Rick Nydegger**, co-founder of **Workman Nydegger**, Utah's largest intellectual property law firm, was one of four lawyers to be presented with an American Intellectual Property Law Association (AIPLA) Project Award last week in Washington D. C. Nydegger was recognized at AIPLA's annual meeting for his outstanding service in facilitating the association's Education 360 Review, a two-year long project designed to work with members of AIPLA's board of directors and various committee chairs in performing a top-to-bottom review of how AIPLA can improve the kinds of CLE provided to its members, including improvement to content and ways to increase access to CLE by all association members.



Curtis M. Jensen

U.S. SUPREME COURT / INTELLIGENCE

U.S. justices won't review intelligence court action on phone records

ACLU attorney Alex Abdo said the Supreme Court's action in the EPIC case had little bearing on the ongoing litigation in lower courts, where judges "will have to grapple with the merits of the NSA's call-tracking program."

Lawrence Hurley
WASHINGTON (Reuters)

The U.S. Supreme Court said on Monday it would not review a ruling by the secretive intelligence court that gave the government access to records kept by Verizon Communications Inc on millions of telephone calls.

The long-shot case was brought to the high court by the Electronic Privacy Information Center (EPIC), a public interest research organization. It was the first time the high-profile issue has come before the justices since former National Security Agency contractor Edward Snowden began in June to leak secret documents detailing American surveillance programs.

The NSA used records like those provided by Verizon as part of the spy agency's counterterrorism surveillance activities.

The court rejected the case in a one-sentence order.

The Obama administration argued in papers presented to the court that under existing law, only the U.S. government or Verizon itself could challenge a ruling by the Foreign Intelligence Surveillance Court.

Marc Rotenberg, EPIC's president, said in a statement that the Foreign Intelligence Surveillance Act makes it difficult to challenge the intelligence court's decisions.

"The surveillance order was clearly unlawful," he said.

The intelligence court's activities received widespread public attention in June when the British-based Guardian newspaper published the order that gave permission for the U.S. government to access data of telecommunications giant Verizon.

Snowden is in Russia, where he was granted asylum in August for at least a year. He faces criminal charges in the United States stemming from his disclosures.

The Supreme Court case is unrelated to several other challenges to the same program, including one pursued by the American Civil Liberties Union in U.S. District Court for the Southern District of New York.

A hearing in that case is scheduled for Friday.

ACLU attorney Alex Abdo said the Supreme Court's action in the EPIC case had little bearing on the ongoing litigation in lower courts, where judges "will have to grapple with the merits of the NSA's call-tracking program."

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2013 Fall Forum panel: (L-R) Hon. William B. Bohling, Randy Kiser, moderator Jon Hafen (standing), and Hon. David Connors

Law Practice/Effectiveness

Best lawyers are confident on the outside, humble on the inside

Donna K. W. Johnson - Part 1

Randy Kiser of DecisionSet was the keynote speaker at the Utah Bar's Fall Forum November 14 and 15 at Little America. Kiser also appeared on a panel with former Third District Court Judge William Bohling, Third District Court Judge Kate Toomey and Second District Court Judge David Connors.

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Best lawyers are confident on the outside, humble on the inside

Law Practice/Effectiveness

The panel and the keynote speech focused on how and why many lawyers are overconfident when assessing their chances of winning cases. The most-effective lawyers are not.

Kiser, Martin Asher and Blakeley McShane analyzed over 2,000 California cases that went to trial between 1964 and 2004 after settlements were rejected. They repeated the study with 524 cases in New York. In both studies, 61 percent of the plaintiffs and 24 percent of the defendants who rejected settlement offers obtained results equal to or worse than the settlement offers. Only 15 percent obtained better verdicts. Furthermore, the problem worsened over time: 54 percent of plaintiffs got worse results at trial than in settlement in 1964, but that figure rose to 66 percent in 2004.

"Many lawyers are alpha-type people," Kiser said. "Alphas—male and female—are quick thinkers, quick to blame or judge, prone to focus on flaws and slow to change their opinions. Many of us spend more time advising or telling rather than listening. But our studies show that the lawyers who get the best results at trial have a different mindset. Their mindset is characterized by lifelong learning,

receptivity and listening. They are constantly asking other people what they think."

Kiser suggested an exercise: "Go through an entire day assuming that everyone you meet has a better opinion than you. We do this with lawyers who come to us [at DecisionSet]. Afterward, they almost always say they, 'I had no idea I was spending so much time assuming other people are wrong.' We as lawyers tend to spend less time listening and more time deflecting—marshaling arguments for why we're right and they're wrong."

Another exercise suggested by Kiser was to ask "Why am I wrong?" while listening to others. He said the most-effective litigators are often the least-confident people, who spend a lot of time analyzing all sides of a case. They are constantly questioning themselves.

Judge Connors, a former partner and litigator with Chapman and Cutler, mentioned the difficulty of minimizing overconfidence when clients want confident lawyers. Kiser replied, "We need to develop soft skills. That means we spend more time listening to clients and learning how to persuade people.

Next year's MCAT will include a whole new section on psychology, and I think that's a good thing."

Panel moderator Jon Hafen asked the judges to assess their skills at predicting case outcomes. Judge Toomey said she could usually predict liability but not damages awards. Judge Connors said he was able to predict the outcome in civil cases more than in criminal cases.

Everyone on the panel felt that effective attorneys are able to be realistic rather than emotional about their cases. Judge Connors observed, "When I see lawyers treating each other poorly in court, it's obvious that they've lost their objectivity. The jury sees it too."

Judge Bohling added, "My job as a mediator is to slake the emotion out of the process. The procedure mediators use is to separate the parties and tell them they need to get down off their white horse and reach some compromise. I think that's why most cases settle in mediation. Of those that don't, it's usually because somebody can't get real about their case. Often they start out highly emotional, and then over the course of the day they real-

ize they aren't going to do any better. A mediator's job is to help them lower their expectations. Clients are more apt to be headed; in most cases the lawyers get to the point where they're working for the deal."

Kiser's study showed that mediation training has a positive effect on case outcomes. Cases where the parties' attorneys had mediation training showed a lower incidence of decision error.

As Kiser summed up "We've found that a cooperative, problem-solving style is more effective than a tough, aggressive style. Hospitals that have adopted a program where doctors can apologize to patients when something goes wrong have a lower incidence of malpractice claims. That's good, because only 21 percent of med-mal plaintiffs actually prevail at trial. I'm not sure if many med-mal plaintiffs are ever told that figure."

Judge Toomey added, "I see so many cases where all the plaintiff really wants is for the defendant to say they're sorry."

LAW PRACTICE / EFFECTIVENESS

Top lawyers are effective decision-makers

"It's not enough for us to be good decision-makers; we have to be good communicators too."

—Randy Kiser

Donna K. W. Johnson - Part 2

Members of a Utah Bar's Fall Forum seminar agreed that effective decision making is a paramount skill for lawyers.

Keynote speaker Randy Kiser of DecisionSet said effective decision making can make or break a case. "But," he cautioned, "how good our decisions are has everything to do with how far we are from our last meal. We might make an entirely different decision on the same issue if we made it at 3 PM instead of right after breakfast."

Kiser and his colleagues Martin Asher and Blakeley McShane found with litigation lawyers that the same case can settle from anywhere from \$25,000 to \$675,000: "Negotiation outcomes are highly idiosyncratic—as much so as trial outcomes. In some cases that's because our decision making is not as effective as it could be. In other cases it's because we failed to deliver a realistic assessment of the case to the client effectively. It's not enough for us to be good decision-makers; we have to be good communicators too."

According to Kiser, making fewer decisions per day can lead to more effective decision making. He said, "We only have the capacity to make a certain number of decisions every day. We don't want to use them up on things that don't really matter."

Ideally, lawyers should spend 80 percent of their decision making capacity on future issues. Kiser said: "More often we spend that 80 percent on past issues. Usually it's on a mistake we made. But we can't change that outcome. We can only learn from it and resolve not to make that mistake again. The scope of the remedy is limited. The future is much less restricted."

Kiser said "maintenance issues" can eat up a lot of decision making capacity. He said: "We need to identify as many of these as we can. They tend to be things we do over and over again, but we use up time and resources re-making those decisions about them. The best thing is to put those issues in default mode and only re-visit them if something changes." Experience alone does not improve deci-

sion making, Kiser and his colleagues found. What helps is to keep track of your decisions: "We suggest that lawyers keep a decision log. In it you write down the issue that needed a decision, the three major premises that drove your decision and what you decided. Then write down your level of confidence in the decision you made, the requirements the decision had to meet, and the consequences. Put

it away in a drawer or give it to a friend—someone you really trust. Then take it out or have them give it back to you six months later. Most often you will learn a lot."

Outside collegial input can help in decision making. Third District Court Judge Kate Toomey observed, "Often attorneys come in for a pre-trial conference and ask me for some

Continued on page A-18



Former SAC Capital portfolio manager Michael Steinberg (R) arrives with his lawyer Barry Berke at the Manhattan Federal Courthouse in New York, November 21, 2013. REUTERS/Brendan McDermid

SAC's Steinberg sought 'illegal edge,' prosecutor tells jurors

By Nate Raymond and Emily Flitter

NEW YORK (Reuters) - A lawyer for Michael Steinberg, a one-time top deputy at Steven A. Cohen's fund SAC Capital Advisors, said Wednesday his client was being unjustly vilified by a former employee acting out of his own self-interest.

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Top lawyers are effective decision-makers

Continued from page A-1

feedback on how I'm leaning. They don't want a pre-judgment; they want an idea of how I feel so far. In my experience those attorneys have a better chance of getting the case settled." The panel agreed.

Second District Court Judge David Connors added, "Sometimes you can ask your judge to ask other judges what they think. Many of them are very willing to do a quick assessment of the case. Those evaluations can be very

helpful."

Kiser said even good decision-makers can be vulnerable to what he calls the sum-cost bias. Mediator and retired Third District Court Judge William Bohling describes it: "We're in settlement negotiations. An attorney says, 'I'm into this case X number of dollars and I have to get it back.' The hardest thing I have to do as a mediator is tell them that's immaterial. The only question that counts is what the case

is worth today."

Experience is no protection against the sum-cost bias. Kiser described an experiment in which Philadelphia attorneys were given the same case. "Half of them were told that the client had spent \$100,000, and the other half told that the client had spent \$300,000," he said. "The ones [who were] told that the client had spent less were far more apt to recommend settlement. And all of these attor-

neys had been practicing for over 20 years."

Kiser said lawyers contemplating settlement decisions need to remember that juries don't think like attorneys. "Lawyers are trained to think in theories and possibilities," he explained. "Juries think in concrete facts. An approach we think is legally correct may not be practical from a jury's viewpoint. We need to be aware of that."

SAC's Steinberg sought 'illegal edge,' prosecutor tells jurors

Continued from page A-1

But a federal prosecutor countered that Steinberg actively sought an "illegal edge" through trades on secret information cultivated through a "corrupt circle" of analysts, including one working at SAC who has pleaded guilty to insider trading.

"He did it to get an illegal edge over ordinary investors who played by the rules," prosecutor Antonia Apps said.

The two lawyers were making opening statements in the U.S. District Court in New York in the trial of Steinberg, the first employee of Cohen's once-powerful hedge fund to go to trial on insider trading charges.

Earlier this month, SAC agreed to plead guilty and pay \$1.2 billion to resolve fraud charges stemming from the insider trading probe. A federal judge is considering whether to accept the plea.

Nine current or former SAC Capital employees have been charged or implicated in wrongful trading while at the hedge fund. Six have pleaded guilty to criminal charges. A sepa-

rate trial in an insider trading case against another former SAC Capital fund manager, Mathew Martoma, is set for Jan. 6.

In their statements on Wednesday, both sides focused heavily on a former SAC analyst, Jon Horvath, who allegedly passed non-public information about two technology companies to Steinberg in 2008 and 2009.

Apps said prosecutors would show how Steinberg pressed Horvath to try harder to get coveted secret information. She told jurors Steinberg knew the information he was receiving and trading on was coming from "corrupt sources" inside companies including Dell Inc and Nvidia Corp.

SELF-INTEREST

For his part, Barry Berke, Steinberg's lawyer, laid out a portrait of Horvath as a deceitful rogue who took advantage of Steinberg and lied to him about the sources of his company information.

"Mr. Horvath chose his self-interest over

the truth and claimed that Mike Steinberg was responsible for his misdeeds," Berke said.

Horvath pleaded guilty in 2012.

Steinberg, 41, faces five counts of securities fraud and conspiracy to commit securities fraud on claims he traded in Dell and Nvidia based on inside information.

At the time, he was managing a portfolio for SAC's Sigma Capital Management hedge fund. He is now on leave from the fund.

The probe of SAC Capital is part of a decade-long crackdown on insider trading by New York federal prosecutors.

Throughout her presentation on Wednesday, Apps peppered her statements with the term "edge," a term that prosecutors have used to describe what Cohen demanded of his subordinates.

In a 2011 deposition in a lawsuit by an insurer, Cohen said, "I hate that word" when a lawyer asked him if it was used at SAC to describe an advantage over other investors.

One term almost entirely absent from the

statements was "hedge fund." Apps used it sparsely and Berke, adopting a folksy style and opening his remarks with a parable about a thief, a farmer and a well, called SAC and its hedge fund peers "institutional investors."

Berke also made colorful use of photographs in a slide presentation he used to accompany his statement, putting an unflattering photograph of Horvath next to a picture of a younger, smiling Steinberg.

Opening statements followed a day-and-a-half process to select 12 jurors and four alternates. The nine women and three men on the jury include an unemployed home health aide, two accountants and a massage therapist.

Among those ultimately excluded, at the urging of Steinberg's lawyers, were two women and one man who said they had participated in the Occupy Wall Street protests of 2011.

The case is *U.S. v. Steinberg*, U.S. District Court, Southern District of New York, No. 12-cr-00121.

U.S. takes action in two auto parts price-fixing cases

LAW PRACTICE / ESTATE AND END-OF-LIFE

Wills for Heroes program helps first responders

"We provide help not only with wills but with living wills, advanced healthcare directives and durable power of attorney."

—Blake Hamilton, Stirba Law Firm

Donna K. W. Johnson

Blake Hamilton of the Stirba Law Firm defends police officers accused of using excessive force while on duty. He believes most police officers and firefighters do an excellent job and contribute immeasurably to their communities. In a natural extension of this practice and belief, he serves as chair of the Utah Bar Young Lawyers Division's Wills for Heroes program. "I've chaired it for almost five years," he says.

According to Hamilton, Wills for Heroes was created following the September 11, 2001 terrorist attacks on the World Trade Towers. "After the attacks," he explains, "it was discovered that most of the first responders who died did not have wills or other essential end-of-life documents in place. That placed an additional burden on their families."

Attorney Anthony Hayes of South Carolina started the national Wills for Heroes program in November of 2001. "Utah was one of the first states to adopt the program," Hamilton recalls. "Now we hold an event every other month. We travel throughout the state, from Logan to St. George and almost everywhere in between. At each event we serve an average of 50 to 60 first responders and their spouses and partners."

The most-recent Wills for Heroes event was held November 16, 2013 at the Park City Fire District. The next one will be on January 18, 2014 at the Orem headquarters of the Utah Highway Patrol. Attorneys volunteer to work at the events, receiving training on the same day. "We use a program called HotDocs to fill in the legal terminology quickly," Hamilton says. "We provide help not only with wills but with living wills, advanced healthcare directives and durable powers of attorney."

Advanced healthcare directives are required by Utah law if people wish to make their own end-of-life healthcare decisions, Hamilton says. "Without them, healthcare personnel are required to do everything possible to prolong life," he explains. "But in certain circumstances, such as persistent vegetative states, that may not be what some people want. An advanced healthcare directive addresses these lifesaving

issues. It also makes your wishes known regarding organ donation and the designation of a legal guardian if needed. It's an excellent way of making sure your wishes are followed if you cannot speak for yourself."

A durable power of attorney allows people

to designate an agent to make financial decisions for them if they are incapacitated, Hamilton says. "And of course," he adds, "a will concerns the disposition of assets after death. We provide these documents as a pack-

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A visitor prays next to burning candles in the Church of the Nativity, the site revered by Christians as Jesus' birthplace, ahead of Christmas in the West Bank town of Bethlehem December 23, 2013. REUTERS/Darren Whiteside

Wills for Heroes program helps first responders

Continued from page A-1

age to cover most eventualities."

First responders and spouses or partners fill out a questionnaire before coming in for their appointments, Hamilton explains. "It addresses their concerns and wishes. They hand it to the attorney they see, and that helps

make the process easy for everyone." Spouses and partners consult separate attorneys in case sensitive issues arise that one partner may not want the other to know about, Hamilton adds.

Attorney response is strong and many volunteer to assist, according to Hamilton. The

January 18 event is already fully staffed. Organizers are looking for attorneys for upcoming events. The March 15, 2014 event will take place at the Sevier County Sheriff's Office in Richfield. The May 17, 2014 event will be held in Salt Lake City at the Unified Fire Authority

headquarters. "We count on a strong turnout," Hamilton says. "It's a wonderful way to give back to those who give so much to us."

Hulu must face privacy lawsuit, U.S. judge rules

By Jonathan Stempel

(Reuters) - Hulu has failed to persuade a federal judge to dismiss a lawsuit accusing the video streaming service of illegally sharing users' viewing history with Facebook Inc and business metrics company comScore Inc.

U.S. Magistrate Judge Laurel Beeler in San Francisco on Friday rejected Hulu's argument that viewers needed to show actual injury to recover damages, even if they qualified as "aggrieved" persons under a 1988 federal law protecting the privacy of video renters.

That law, the Video Privacy Protection Act (VPPA), was adopted after a newspaper in 1987 published an article about movies that the Supreme Court nominee Robert Bork had rented.

Hulu had argued that the law "was not adopted to impose multi-billion dollar liability on the transmission of anonymous data where no one suffers any actual injury."

Beeler, however, concluded that "the statute requires only injury in the form of a wrongful disclosure" before damages might be available. She did not rule on the merits of the case.

Hulu is a joint venture owned by Comcast Corp's NBCUniversal, 21st Century Fox Inc's Fox Broadcasting, and Walt Disney Co's ABC. Chief Executive Mike Hopkins on Dec. 18 said Hulu will post \$1 billion of revenue in 2013, up from \$695 million in 2012.

The lawsuit seeks class-action status on behalf of Hulu users nationwide. It was brought by several people in California, Illinois and New

York seeking damages of at least \$2,500 per violation, plus punitive damages and other sums.

These plaintiffs claimed that Hulu let third parties engaged in marketing, advertising, and social networking track their video choices without permission.

They claimed that Hulu sent such information to Scorecard Research, a comScore market research unit, and sent "Facebook IDs that linked their video choices to personally identifiable Facebook registration information."

Hulu did not immediately respond on Monday to a request for comment. Its lawyer Robert Schwartz did not immediately respond to a similar request. David Parisi, a lawyer for the plaintiffs, also did not immediately respond to such a request.

Hulu has separately argued it would be too hard to certify a class of plaintiffs. It noted that many users employ fake names, including 644 named "Homer Simpson," 450 named "Mickey Mouse," 131 named "Santa Claus" and 18,581 named "John Doe."

Beeler has also scheduled a Feb. 6, 2014 hearing on Hulu's second motion to dismiss the case. There, Hulu claimed it did not knowingly transmit protected information to Facebook and comScore in a manner that violated the VPPA.

The case is *In re: Hulu Privacy Litigation*, U.S. District Court, Northern District of California, No. 11-03764.



The HULU Plus app plays a movie trailer on a Samsung Galaxy phone in this photo-illustration in New York, December 23, 2013. Hulu has failed to persuade a federal judge to dismiss a lawsuit accusing the video streaming service of illegally sharing users' viewing history with Facebook Inc and business metrics company comScore Inc. REUTERS/Carlo Allegri

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BYU Alumn, Pro Bono Attorney of Year

BYU Law School alumnus Elizabeth Elon Thompson ('09) has been selected as the Pro Bono Attorney of the Year by the Utah State Bar.

Thompson's first law work was as corporate counsel for a Utah firm when relatives asked her for help to set up a guardianship for their autistic children. She talked to another attorney with experience in the area who agreed to help her with this pro bono project. She found another attorney willing to volunteer for the court visitor, too. She was gratified and committed to use her legal skills for more pro bono work, but she left the corporate counsel work for a plaintiff's firm in litigation and no longer had time to devote as a volunteer.

That is until she was hired to negotiate contracts for library software by SirsiDynix. This company encourages public service, and Thompson, now out of full-time litigation, had more time. In a State Bar email listing opportunities for service, "Lend a Learned Hand," she saw work with an adoption, contacted the Bar to refer her to an experienced mentor, and took the case on. She was attracted to this case because she wanted to learn more about adoption law and felt comfortable taking it because of the experienced attorney who would mentor her. She takes pro bono cases on a case-by-case basis and is currently working on another family law case. She sees the beauty in partnering with other attorneys in pro bono work—one to mentor and one to be mentored; and one to advise and one to do the legwork.

Thompson also serves the Law School community as a Trial Advocacy trainer and judge for co-curricular events. She has been the guest speaker for an Advocacy class. She is married, the mother of a three year-old and expected her second child this spring.



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