

January 2005

## Report of the President

Wyoming State Bar

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## **Proceedings of the 2004 Wyoming State Bar Annual Meeting**

### **WYOMING STATE BAR OFFICERS**

Thomas E. Lubnau, II, President  
Mark W Harris, President-Elect  
Warren A. Lauer, Vice President  
Joseph B. Bluemel, Secretary-Treasurer

### **WYOMING STATE BAR COMMISSIONERS**

Gay V. Woodhouse, First Judicial District  
William M. MacPherson, Second Judicial District  
Richard L. Lavery, Third Judicial District  
Greg L. Goddard, Fourth Judicial District  
Michael S. Messenger, Fifth Judicial District  
Stanley S. Sheehan, Sixth Judicial District  
P. Jaye Rippley, Seventh Judicial District  
Eric E. Jones, Eighth Judicial District  
R. Michele Russell, Ninth Judicial District

### **OFFICERS ELECTED AT THE 2004 ANNUAL MEETING**

Mark W Harris, President  
Warren A. Lauer, President-Elect  
Joseph B. Bluemel, Vice President  
William M. MacPherson, Secretary-Treasurer  
Timothy J. Kirven, Wyoming State Bar Delegate to ABA

### **NEWLY ELECTED COMMISSIONERS**

William L. Hiser, Second Judicial District  
C. John Cotton, Sixth Judicial District

## REPORT OF THE PRESIDENT

*Thomas E. Lubnau, II, President of the Wyoming State Bar, 2003-2004*

The experience of serving as president of the Wyoming State Bar has been one of the high points of my life. I have found the experience to be rewarding and challenging. Twenty-five years ago, my father served in this position, and it has been an honor to follow in his footsteps. When I sought the office of president of the Wyoming State Bar three years ago, I identified several goals, some lofty and some practical that I would like to achieve. I am pleased to report that most of them have been accomplished and that the Bar did a great deal the last year. Here are the things that I wanted to accomplish:

- *The WSB should work to improve the public's perception of Wyoming lawyers*

I referred to this goal as “spreading the truth that Wyoming lawyers are extremely skilled, educated and involved members of their communities, and that the aspersions cast on lawyers as a profession are unwarranted and untrue.” This task commanded most of my efforts. Every time I heard someone make a disparaging remark about a lawyer, I stood up and shouted, “Hey, that’s unacceptable.” In order to “put my money where my mouth is,” I wrote several letters to the editor and made several statements to the press when the legal profession was unfairly portrayed.

One of the important ways to enhance the reputation of lawyers is to help the public understand what lawyers do and why they are important to the functioning of a free society. Many lawyers serve their communities on a daily basis. This willingness to serve was demonstrated when we asked Wyoming lawyers to volunteer to draft wills for Wyoming National Guard personnel who were deployed to Iraq. Fifty-seven attorneys offered assistance within a day after receiving the notice. Also, we were able to help a young Eagle Scout candidate with his project of refurbishing a replica of the statute of liberty that was located in front of the Wyoming Supreme Court building. I also want to commend the ten attorneys who selflessly served in the Wyoming state legislature, especially during the rancorous debates on “tort reform.” Their professionalism and thoughtful approach to difficult issues did much to raise the public's perception of lawyers.

I am so very proud of what we as lawyers do and how we make a difference. I am concerned, however, that we are not doing enough to protect our honorable profession. We will continue to be the brunt of society’s jokes until we take a stand. We need to remind folks about the only profession mentioned in the U.S. Constitution. We need to let them know that when government gets too big, or their rights are infringed upon, we will be there to help them. We need to let people know that this profession is an honorable one, that does not prey on the weak and sick in our society, but

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Thank you, fellow members of the Wyoming State Bar, for allowing me to lead you for this brief moment in time.

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We feel that the work of the UPL Committee is very important, because it protects Wyoming citizens from persons who should not be providing legal advice and assistance.

REPORT OF THE PERMANENT RULES ADVISORY COMMITTEE  
(EVIDENCE DIVISION)

*Hon. Jeffrey A. Donnell, Chairperson*

The Committee's Annual Report this year is short. No meetings were held and the Committee took no action during the current reporting year. It should be noted that a fairly extensive review of the Rules of Evidence was undertaken last year and that, while a number of amendments were considered, none were recommended. Inasmuch as the Committee received no requests this year for review or reconsideration of any of the Rules, the Committee did not feel it necessary that further review be undertaken.

As always, the Committee would be happy to consider any questions or requests for review that might be put before it.

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*Hon. David B. Park, Chairperson*

The Permanent Rules Advisory Committee proposed two amendments to the Wyoming Rules of Criminal Procedure. The first proposed amendment was to Rule 24(e), Trial Jurors. After a lengthy discussion regarding the impact of recent Supreme Court decisions, specifically *Alcade v. State*, 74 P.3d 1253 (Wyo. 2003), and *McAdams v. State*, 75 P.3d 665 (Wyo. 2003), the Judicial Board of Policy and Administration requested that Supreme Court staff draft language to reflect the Board's adjustments to the proposed language. The Supreme Court amended the rule on December 19, 2003, effective March 1, 2004.

The second proposed amendment was to Rule 32, Judgment and Sentence. The proposed changes reflect the impact of *Nixon v. State*, 51 P.3d 851 (Wyo. 2003). The Board requested further research and information. After further discussions at a later meeting, the Board decided not to adopt the proposal.

REPORT OF THE LEGAL AID SERVICES COMMITTEE  
*Jacqueline Brown, Chairperson*

The legal aid services committee is attempting to raise funds to develop a legal needs assessment. We know there is a large segment of the population with legal needs that are unmet. There has not been any survey done, however, to determine exactly how great this population is or what their legal needs are. We believe very strongly that a county-by-county survey should be undertaken to determine this need and then, once the needs are known, take efforts to help meet those unmet legal needs. Funding needs to be raised to implement the survey and ensure that a statistically accurate survey is accomplished county by county.

REPORT OF LAW SCHOOL LIAISON COMMITTEE  
*Gregory C. Dyekman, Chairperson*

The Law School Liaison Committee has continued its function as a bridge between the Wyoming State Bar and the University of Wyoming College of Law. During a recent meeting of the Committee, Dean Parkinson noted that it had been a banner year for the Law School in most respects and that the incoming class appears to be excellent. The College continues to be more and more selective as the number of applications continues to increase.

As noted in the Dean's article in the August *Wyoming Lawyer*, the *U.S. News and World Report* ranking of the University of Wyoming College of Law dropped this year, largely due to a combination of some changes in the ranking format and the College's continuing lack of financial resources when compared to other law schools. The Dean and the Liaison Committee will continue to study ways of enhancing the reputation of the Law School as well as its resources, even though the Dean has strong feelings that these rankings are based on little or no actual knowledge by those rating law schools.

The Committee heard about classroom remodeling at the College of Law including "smart" classrooms made possible by technology grant funding. Members of the Bar are encouraged to see these new classrooms for themselves.

The Committee will continue to study issues relating to judicial law clerks and the timing of interviews for such clerkships. In addition, recruitment and placement of minority students will be further discussed.

A new clinic offering legal services to University of Wyoming students and manned by UW law students will receive a one-year trial in the 2004-2005 school year. As always, the College of Law thanks the members Wyoming Bar for their participation in the College's activities, including competitions, CLE programs and recognition activities. The Committee will

continue to serve a liaison function between the College of Law and the Bar Examiners and the Chairman of the Committee will continue to serve on the College of Law's Board of Visitors.

Members of the Bar are encouraged to contact members of the Law School Liaison Committee with ideas, questions, concerns or comments about the Law School or its relationship with the Bar in Wyoming.

#### REPORT OF THE LAWYER REFERRAL SERVICE COMMITTEE

*James L. Edwards, Chairperson*

The Lawyer Referral Service (LRS) is ably staffed by Cathy Duncil, Lawyer Referral Coordinator. The program has grown significantly in the last few years, including the number of lawyer participants and persons requesting a referral. One-hundred thirty-six attorneys are members of the LRS. Members live in 16 Wyoming counties and 6 surrounding states. On an average month, over 200 persons call the LRS for a referral.

The Committee has proposed several changes to its Rules Of Operation during this past year. The changes provide clarity, reflect current procedures and make the LRS rules consistent with other Bar rules. In addition, the Application Form was removed from the Rules so that clerical changes can be made without having to go through the rule making process. The proposed changes will be presented to the Officers and Commissioners at their next meeting, published for comment and submitted to the Wyoming Supreme Court before the end of the year

The Wyoming State Bar will be updating its website within the next year and the LRS page will be made more user friendly at that time. Hits on the LRS page of the website have steadily increased; the combined total of hits during the last 7 months was 16,352.

The LRS provides a great service to Wyoming lawyers and to persons who are in need of an attorney. Please think about becoming a part of this much-needed service.

#### REPORT OF THE ABA STATE BAR DELEGATE

*Timothy J. Kirven, Wyoming State Bar Delegate*

Thank you for the opportunity to report on the activities of the American Bar Association during this past year. The House of Delegates convened at the mid-year meeting on February 9, 2004, and at the annual meeting on August 9, 2004.

One of the significant actions taken by the ABA was initiation of a lawsuit against the Federal Trade Commission's decision to subject lawyers to the privacy provisions of Title V of the Gramm-Leach-Bliley Act of 1999.

The ABA was pleased to report that on April 30, 2004, a decision by the U.S. District Court for the District of Columbia was in the ABA's favor. The U.S. District Court held that the Federal Trade Commission's decision to subject lawyers to the Act was "beyond the commission's statutory authority" and constituted an "arbitrary and capricious agency action." The ABA had asserted that all attorneys and law firms are bound by a duty of confidentiality that is more formal, broad, and protective of consumer privacy than the Gramm-Leach-Bliley provisions.

In other actions, the House of Delegates:

- Adopted amendments to the civil discovery standards, which address practical aspects of electronic discovery that are not fully addressed by the Rules of Civil Procedure.
- Adopted *Standards of Practice for Lawyers Representing Child Welfare Agencies*, which focus on improving representation of the child welfare system in abuse and neglect cases so that children and families are served by the legal system.
- Adopted the *Model Court Rule on Insurance Disclosure*, which requires lawyers to disclose on their annual registration statements whether they maintain professional liability insurance which information will be made accessible to the public.
- Recommended the accreditation of crime laboratories and medical examiner's offices, the certification of examiners, and the standardization and publication of lab procedures and urged adequate funding for crime labs and medical examiner's offices for improving scientific and expert testimony in criminal cases.
- Urged Congress to reduce the federal tax burdens and compliance costs attributable to the alternative minimum tax (AMT) on individuals by repealing the individual AMT tax.
- The House also considered a myriad of other issues pertaining to law and society. For example, while not condoning cloning, the House opted for a resolution urging the protection of the rights of live born human clones by supporting policies that essentially establish a presumption that a live born human clone is legally a separate and distinct person from its progenitor and that a human clone is a human being and has legal parents.

Last year, I reported that the ABA had strongly advocated for the rights of non-combatant detainees to have counsel and to have hearings regarding their detention. This spring, the U.S. Supreme Court agreed, holding that such individuals were entitled to be represented by a lawyer.

The ABA continues to address a variety of issues in a leadership role for the establishment of law and policies affecting all lawyers and their clients.



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(CRIMINAL DIVISION)

*Hon. David B. Park, Chairperson*

The Permanent Rules Advisory Committee proposed two amendments to the Wyoming Rules of Criminal Procedure. The first proposed amendment was to Rule 24(e), Trial Jurors. After a lengthy discussion regarding the impact of recent Supreme Court decisions, specifically *Alcade v. State*, 74 P.3d 1253 (Wyo. 2003), and *McAdams v. State*, 75 P.3d 665 (Wyo. 2003), the Judicial Board of Policy and Administration requested that Supreme Court staff draft language to reflect the Board's adjustments to the proposed language. The Supreme Court amended the rule on December 19, 2003, effective March 1, 2004.

The second proposed amendment was to Rule 32, Judgment and Sentence. The proposed changes reflect the impact of *Nixon v. State*, 51 P.3d 851 (Wyo. 2003). The Board requested further research and information. After further discussions at a later meeting, the Board decided not to adopt the proposal.

REPORT OF THE LEGAL AID SERVICES COMMITTEE  
*Jacqueline Brown, Chairperson*

The legal aid services committee is attempting to raise funds to develop a legal needs assessment. We know there is a large segment of the population with legal needs that are unmet. There has not been any survey done, however, to determine exactly how great this population is or what their legal needs are. We believe very strongly that a county-by-county survey should be undertaken to determine this need and then, once the needs are known, take efforts to help meet those unmet legal needs. Funding needs to be raised to implement the survey and ensure that a statistically accurate survey is accomplished county by county.

REPORT OF LAW SCHOOL LIAISON COMMITTEE  
*Gregory C. Dyekman, Chairperson*

The Law School Liaison Committee has continued its function as a bridge between the Wyoming State Bar and the University of Wyoming College of Law. During a recent meeting of the Committee, Dean Parkinson noted that it had been a banner year for the Law School in most respects and that the incoming class appears to be excellent. The College continues to be more and more selective as the number of applications continues to increase.

As noted in the Dean's article in the August *Wyoming Lawyer*, the *U.S. News and World Report* ranking of the University of Wyoming College of Law dropped this year, largely due to a combination of some changes in the ranking format and the College's continuing lack of financial resources when compared to other law schools. The Dean and the Liaison Committee will continue to study ways of enhancing the reputation of the Law School as well as its resources, even though the Dean has strong feelings that these rankings are based on little or no actual knowledge by those rating law schools.

The Committee heard about classroom remodeling at the College of Law including "smart" classrooms made possible by technology grant funding. Members of the Bar are encouraged to see these new classrooms for themselves.

The Committee will continue to study issues relating to judicial law clerks and the timing of interviews for such clerkships. In addition, recruitment and placement of minority students will be further discussed.

A new clinic offering legal services to University of Wyoming students and manned by UW law students will receive a one-year trial in the 2004-2005 school year. As always, the College of Law thanks the members Wyoming Bar for their participation in the College's activities, including competitions, CLE programs and recognition activities. The Committee will

continue to serve a liaison function between the College of Law and the Bar Examiners and the Chairman of the Committee will continue to serve on the College of Law's Board of Visitors.

Members of the Bar are encouraged to contact members of the Law School Liaison Committee with ideas, questions, concerns or comments about the Law School or its relationship with the Bar in Wyoming.

#### REPORT OF THE LAWYER REFERRAL SERVICE COMMITTEE

*James L. Edwards, Chairperson*

The Lawyer Referral Service (LRS) is ably staffed by Cathy Duncil, Lawyer Referral Coordinator. The program has grown significantly in the last few years, including the number of lawyer participants and persons requesting a referral. One-hundred thirty-six attorneys are members of the LRS. Members live in 16 Wyoming counties and 6 surrounding states. On an average month, over 200 persons call the LRS for a referral.

The Committee has proposed several changes to its Rules Of Operation during this past year. The changes provide clarity, reflect current procedures and make the LRS rules consistent with other Bar rules. In addition, the Application Form was removed from the Rules so that clerical changes can be made without having to go through the rule making process. The proposed changes will be presented to the Officers and Commissioners at their next meeting, published for comment and submitted to the Wyoming Supreme Court before the end of the year

The Wyoming State Bar will be updating its website within the next year and the LRS page will be made more user friendly at that time. Hits on the LRS page of the website have steadily increased; the combined total of hits during the last 7 months was 16,352.

The LRS provides a great service to Wyoming lawyers and to persons who are in need of an attorney. Please think about becoming a part of this much-needed service.

#### REPORT OF THE ABA STATE BAR DELEGATE

*Timothy J. Kirven, Wyoming State Bar Delegate*

Thank you for the opportunity to report on the activities of the American Bar Association during this past year. The House of Delegates convened at the mid-year meeting on February 9, 2004, and at the annual meeting on August 9, 2004.

One of the significant actions taken by the ABA was initiation of a lawsuit against the Federal Trade Commission's decision to subject lawyers to the privacy provisions of Title V of the Gramm-Leach-Bliley Act of 1999.

The ABA was pleased to report that on April 30, 2004, a decision by the U.S. District Court for the District of Columbia was in the ABA's favor. The U.S. District Court held that the Federal Trade Commission's decision to subject lawyers to the Act was "beyond the commission's statutory authority" and constituted an "arbitrary and capricious agency action." The ABA had asserted that all attorneys and law firms are bound by a duty of confidentiality that is more formal, broad, and protective of consumer privacy than the Gramm-Leach-Bliley provisions.

In other actions, the House of Delegates:

- Adopted amendments to the civil discovery standards, which address practical aspects of electronic discovery that are not fully addressed by the Rules of Civil Procedure.
- Adopted *Standards of Practice for Lawyers Representing Child Welfare Agencies*, which focus on improving representation of the child welfare system in abuse and neglect cases so that children and families are served by the legal system.
- Adopted the *Model Court Rule on Insurance Disclosure*, which requires lawyers to disclose on their annual registration statements whether they maintain professional liability insurance which information will be made accessible to the public.
- Recommended the accreditation of crime laboratories and medical examiner's offices, the certification of examiners, and the standardization and publication of lab procedures and urged adequate funding for crime labs and medical examiner's offices for improving scientific and expert testimony in criminal cases.
- Urged Congress to reduce the federal tax burdens and compliance costs attributable to the alternative minimum tax (AMT) on individuals by repealing the individual AMT tax.
- The House also considered a myriad of other issues pertaining to law and society. For example, while not condoning cloning, the House opted for a resolution urging the protection of the rights of live born human clones by supporting policies that essentially establish a presumption that a live born human clone is legally a separate and distinct person from its progenitor and that a human clone is a human being and has legal parents.

Last year, I reported that the ABA had strongly advocated for the rights of non-combatant detainees to have counsel and to have hearings regarding their detention. This spring, the U.S. Supreme Court agreed, holding that such individuals were entitled to be represented by a lawyer.

The ABA continues to address a variety of issues in a leadership role for the establishment of law and policies affecting all lawyers and their clients.