

FALL 2009 VOL. 15 NO. 2

# TPIJ

## *Texas Paralegal Journal*

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# PRESIDENT'S *Message*

by Stephanie Hawkes, RP, CIPP

**H**appy Autumn! I love this time of year. I know that from a calendar perspective, the new year starts in January, but between having a fall birthday and almost 20 years of thinking of the new year beginning on the first day of school, I tend to think of fall as the beginning of the new year.

This year, this line of thinking is especially true since we have just started a new year with the Paralegal Division. At the very end of June, we had a great Board Meeting and set goals for the new term and have started the process to achieve them. Of the several goals we set, the most important to me is communication.

Sociologists have labeled the era in which we live as "the Communication Age." I'm proud to say that the PD is keeping up and leading the legal industry in this age. We have introduced an electronic newsletter, hosted by Constant Contact. We trust that you will find the newsletter to be informative and interesting. Your Directors will continue to communicate with you about events specific to your district and help you build relationships within the district while we use the Newsletter to give you information about the PD in general or events of interest to all members.

Our e-group continues to be strong and a recent survey found that many members consider the e-group to be the biggest member benefit. You do need to sign up to use the e-group and I encourage you to do so. I personally have saved myself many hours of research by posting questions to others who are more knowledgeable in a certain topic. It is a great way to find resources and network with paralegals across the state.

The PD is also taking advantage of technology in our communication. We have created a blog, which provides articles of interest, on our website, [www.txpd](http://www.txpd). We are also using Twitter to communicate, follow us at [www.twitter.com/](http://www.twitter.com/)



[txpd](http://txpd) for the most up-to-date information on all that the PD has to offer. You can also join our Linked-In group or become a Fan on Facebook. All of this technology helps us communicate with our members and others in the legal community. There has been some great networking taking place in these forums and I look forward to seeing their

use grow.

The most important communication is the voice of our members. I encour-

age you to contact me or President-Elect Debbie Guerra or your own Director with ideas, questions, suggestions or criticism. We are all committed to making sure each member gets what they need from the Division. Often times we struggle to know what our members need, so please tell us.

Enjoy your fall and keep communicating!

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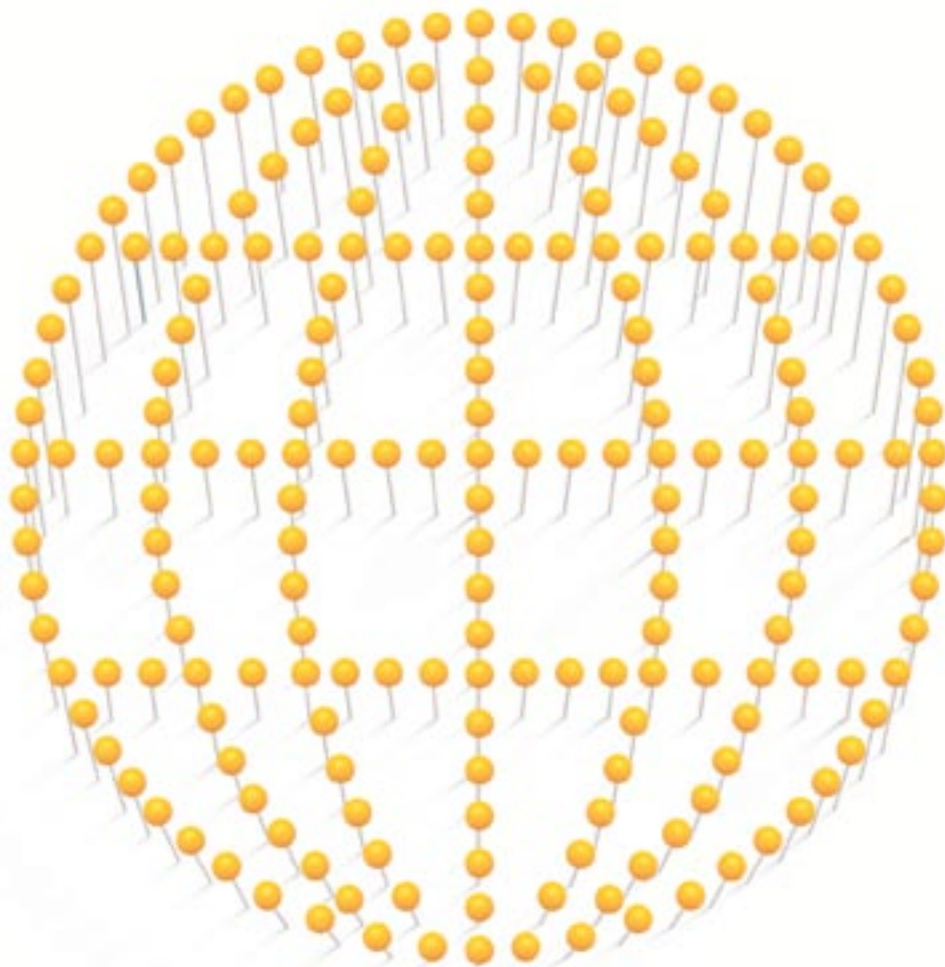
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# TPIJ

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# EDITOR'S *Note*

## TEXAS PARALEGAL DAY—OCTOBER 23, 2009

The State Bar of Texas was the first bar association in the United States to create a separate Division for paralegals. The Paralegal Division of the State Bar of Texas (Division) was created on October 23, 1981, and has been in existence for 28 years. In honor of the many contributions made by the paralegal community and the Paralegal Division, the Senate of the State of Texas adopted Proclamation No. 1144, recognizing October 23rd as Texas Paralegal Day. Please join in the celebration of Texas Paralegal Day on October 23, 2009 by attending an event around the State.

- D1 (Houston) District 1 will be co-hosting an "All Association" Paralegal Day celebration on either Wednesday, October 21st or Thursday, October 22nd (venue details are being finalized) in downtown Houston. Contact Sandy Hartman at shartman@petroleumwholesale.com
- D2 (Dallas) Paralegal Day Celebration sponsored by the Paralegal Division of the State Bar – District 2, the North Texas Paralegal Association and the Dallas Area Paralegal Association on Thursday, October 22, 2009 from 6:00pm–8:00pm at the Stoneleigh Hotel & Spa, 2927 Maple Avenue, Dallas. Contact: Connie Nims at District2@txpd.org or Donna Sorensen, NTPA President, at 972.606.7115, dsorensen@safranusa.com
- D3 (Fort Worth) is holding a Career Day on October 23, 2009, with a mock arbitration and a mock voire dire at the Tarrant County Justice Center, with a tour of the courthouses, including the new Family Law Center. It is scheduled from 9 a.m. until 1 p.m. It is open to all paralegals and paralegal students and will offer CLE credit. Contact: Michele Rayburn at 817.338.1707 or District3@txpd.org
- D4 (Austin) Paralegal Day Celebration sponsored by the Capital Area Paralegal As-

sociation at the Sheraton Austin Hotel from 5:30 pm–7:30 pm on Thursday, October 22. Contact Cathy Martin at 512.434.2584.

- D5 (San Antonio) Paralegal Day celebration sponsored by D5 Paralegal Division, AAPA (Alamo Area Organization of Paralegals) and STOP (South Texas Organization of Paralegals) on October 23, 2009 from 12:00 noon–1:00 pm at the Bright Shawl Restaurant, 811 Augusta Street, San Antonio, 78215. Keynote Speaker: Honorable Pamela A. Mathy, U.S. Federal Magistrate Judge Plans: vendor parade, a \$500.00 and a \$250.00 gift card to be raffled, and the announcement of 2009 Paralegal of the Year. Contact: Melanie Langford at mlangford@akingump.com
- D6 (Lubbock) will celebrate Texas Paralegal Day with a dinner at Harrigan's (on the patio), 3825 50th Street, Lubbock, Texas, beginning at 6:00 p.m. on Thursday, October 22, 2009. Contact: Sheila Veach at 806-780-3976 or email at District6@txpd.org
- D10 (Beaumont) Southeast Texas Association of Paralegals is having their Paralegal Day Celebration on October 22, 2009, at the Art Museum of Southeast Texas, from 11:30 am to 1:00 pm. with Judge Larry Gist as the keynote speaker. The Art Museum is located in downtown Beaumont. Contact: Cheryl Bryan at (409) 838-6412 of District10@txpd.org
- D11 (Midland) celebrating Paralegal Day/ Court Observance Day on October 6 at the Hilton Midland Plaza from 11:30 am to 1:00 pm. The keynote speaker will be SBOT President Roland Johnson. Anyone interested can contact Kim Hennessy, District 11 Director at 432-688-0263 or at District11@txpd.org.
- D16 (El Paso) District 16 and EPPA will be hosting a Texas Paralegal Day lunch celebration on Thursday October 15 at the El Paso Club. Contact District16@txpd.org

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### DEADLINE FOR SUBMISSION OF ARTICLES FOR THE WINTER/SPRING ISSUE IS JANUARY 2, 2010.

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# Welcome To The Cyberjungle

by Matthew Jennings

*"The remarkable social impact and economic success of the Internet is in many ways directly attributable to the architectural characteristics that were part of its design. The Internet was designed with no gatekeepers over new content or services."*

– Vint Cerf, Google's  
"Chief Internet Evangelist"



The Internet is truly a revolutionary new communications medium, as it has unleashed entirely new technologies, companies, and market segments. It is a testament to the Internet's rapid growth and continual creative destruction that the company which most dominates Internet searching, Google, only went public on August 19, 2004 (the Google behemoth is still a veritable toddler!). While this phenomenal growth and innovation provides companies with many new opportunities, it can also threaten their valuable intellectual property. This paper will examine the most common threats to copyrights and trademarks found on the Internet, as well as enforcement frameworks provided by regulators and best practices for the effective protection of intellectual property on the web.

## COPYRIGHT INFRINGEMENT

### Introduction

Copyright law applies to any "original work of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either with the aid of a machine or device." 17 U.S.C. 6 102. The forms of expression in which a copyrighted work may be fixed are extremely broad, and may include, for example, literary works (which encompass software), musical works, dramatic works, pictorial works, sculptural works, graphical works, motion pictures, sound recordings and architectural works. 17 U.S.C. 6 101. Courts have even extended the definition of "tangible medium of expression" to include magnetic tapes, hard drives, optical media, and computer memory. The exclusive owner of a copyrighted work enjoys certain rights in that copyright, including the rights to reproduce the work, prepare derivative works, distribute copies, and to per-



form or display the work. 17 U.S.C. 6 106.

When a copyright holder identifies infringing use of its copyright on the Internet, traditional methods of copyright enforcement may be used. For example, the copyright holder may identify the owner of the website (the “registrant”) by looking up the WHOIS information listed for the offending domain registration and sending a standard cease and desist letter demanding removal of the content. Additionally, the copyright holder may file suit against the registrant for copyright infringement. However, this standard enforcement mechanism is often thwarted by anonymous or fraudulent WHOIS information, whereby the copyright holder is unable to identify the infringer. When this occurs, the most obvious solution is to go after the Internet service provider and/or the domain host (collectively, the “registrar”) under the theory of indirect infringement, as the registrar knows the registrant’s true identity. Unfortunately, the overwhelming majority of registrars will not disclose registrant identity without a court order. Mindful of copyright holder’s frustration in enforcing their rights, and the potentially massive liability faced by registrars, Congress passed the Digital Millennium Copyright Act (DMCA) to encourage the orderly address of copyright infringement claims, while providing safe harbor to registrants accused of indirect infringement.

#### **The Digital Millennium Copyright Act (DMCA)**

The DMCA extended the reach of copyright, while limiting the liability of registrars from copyright infringement by their users. By taking certain steps required by the DMCA, registrars may avoid monetary damages under U.S. copyright law arising from activities covered by the law. 17 U.S.C. 6 512. Additionally, the DMCA limits the availability of injunctive relief against the registrar for copyright infringement and all liability for registrars who, in good

faith, remove or disable access to material that is claimed to be infringing or that is apparently infringing from the facts and circumstances. One recent case involving DMCA notices provides a good summary of the underlying policy rationales:

“The DMCA requires a complainant to declare, under penalty of perjury, that he is authorized to represent the copyright holder, and that he has a good-faith belief that the use is infringing. This requirement is not superfluous. Accusations of alleged infringement have drastic consequences: A user could have content removed, or may have his access terminated entirely. If the content infringes, justice has been done. But if it does not, speech protected under the First Amendment could be removed. We therefore do not require a service provider to start potentially invasive proceedings if the complainant is unwilling to state under penalty of perjury that he is an authorized representative of the copyright owner, and that he has a good-faith belief that the material is unlicensed.”

*Perfect 10, Inc. v. ccBill LLC*, 488 F.3d 1102, 1112 (9th Cir. 2007).

It should be noted that the DMCA broadly defines “service provider” beyond just ISPs, registrars, and Internet backbone providers. *See, e.g.*, 17 U.S.C. 6 512(k)(1). For most of the activities covered by the DMCA, “service provider” means “a provider of online services or network access, or the operator of facilities therefor.” 17 U.S.C. 6 512(k)(1)(B). The language of this definition encompasses businesses that operate websites or other Internet services or facilities and likely also company LANs and intranets. Caselaw interpreting this language has found that the term ‘service provider’ is

defined so broadly that we have trouble imagining the existence of an online service that would not fall under the definitions \* \* \*.” *In Re Aimster Copyright Litig.*, 252 F. Supp. 2d 634 (N.D. Ill. 2002), *aff’d*, 334 F.3d 643, 655 (7th Cir. 2003) (affirming district court ruling that Aimster is an OSP). Indeed, recent courts have found that large commercial sites, such as Amazon and eBay, meet the definition for purposes of the DMCA. *See e.g., Corbis v. Amazon.com*, 351 F.Supp.2d 1090 (W.D. Wash. 2004) and *Hendrickson v. Amazon.com*, 298 F.Supp.2d 914, 915 (C.D.Cal.2003) (both cases held that Amazon meets DMCA definition of service provider); *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1087 (C.D. Cal. 2001) (acknowledging the broad definition of a service provider and stating that eBay “clearly” falls within this definition).

The DMCA safe harbor provisions cover four common types of service provider activities:

#### *Transitory Digital Network*

*Communications.* Sending communications initiated by others through a service provider’s system, where the service provider does not alter the content (*e.g.*, providing Internet backbone connections or routing digital transmissions through servers). 17 U.S.C. 6 512(a). *See Ellison v. Robertson*, 357 F. 3d 1072 (9th Cir. 2004) (holding that AOL’s storage of infringing material on its Usenet servers for fourteen days qualifies the material as ‘transitory digital network communications’).

*System Caching.* Temporarily storing online material (such as a website or web page) on a service provider’s system. The statute defines “caching” narrowly to include only situations where a user has first requested the material in question, and the service provider subsequently holds a copy to serve to subsequent users. 17 U.S.C. 6 512(b).





*Providing Storage Space on a System or Network.* Storing, at the direction of a user, material that resides on a service provider's system or network (such as bulletin boards, chat rooms, and hosted website). 17 U.S.C. 6 512(c). This provision applies to situations where (1) infringing material is stored on the service provider's website, or (2) infringing activity occurs using the material on the service provider's system. See *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1088 (C.D. Cal. 2001) (held that sale of infringing items through eBay's website constituted infringing 'activity using the material on the [service provider's computer] system' and held eBay immune pursuant to the safe harbor).

*Providing Information Location Tools.*

Referring or linking users to an online location containing infringing material or infringing activity via search engines, links, directories and similar information location tools. 17 U.S.C. 6 512(d).

All four DMCA safe harbors (66 512(a), (b), (c) and (d)) are available to a registrar, but only if that registrar "has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders \* \* \* who are repeat infringers." 17 U.S.C. 6 512(i)(1)(A). Courts have held that a "reasonable" DMCA policy requires three things: (1) a working notification system; (2) a procedure for dealing with DMCA complaints; and (3) systems that allow copyright holders to collect the information needed to issue DMCA complaints. See *Perfect 10 v. ccBill*, 488 F.3d at 1102. Additionally, registrars seeking the protection of DMCA safe harbors must accommodate and not interfere with "standard technical measures" for the identification or protection of copy-

righted works. 17 U.S.C. 512(i)(1)(B). This applies only to measures that have been developed pursuant to broad industry consensus, are available to any person on reasonable and nondiscriminatory terms, and do not impose substantial costs or burdens on service providers. 17 U.S.C. 512(i)(2).

It must also be noted that DMCA immunity "is not presumptive, but granted only to 'innocent' service providers." *ALS Scan v. Remarq Communities, Inc.*, 239 F.3d 619, 625 (4th Cir. 2001). In determining whether a registrar is "innocent," courts have generally required that registrar: (1) must have neither actual knowledge that the material or activity is infringing nor awareness of facts or circumstances from which infringing activity is apparent; (2) must not have both the right and ability to control infringing activity or receive a financial benefit directly attributable to such activity; and (3) must respond expeditiously to remove, or disable access to, accused material upon notification of alleged infringement.

Notice of infringement to the registrar must (1) contain the physical or electronic signature of claimant; (2) identify the allegedly infringing material sufficiently to permit its removal or limit access; (3) provide information sufficient to contact the party providing the notice; (4) contain a statement that the complaining party has a good faith belief that use of the material is not authorized; and (5) contain a statement that the information in the notice is accurate and, under penalty of perjury, that either the owner or the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. 17 U.S.C. 6 512(c)(3). After verifying that the notice complies with the provisions of the DMCA, the registrar must promptly remove or disable access to the material in question and take reasonable steps to promptly notify the affected user that the material has been removed or access to it

has been disabled. If the registrar receives a "counter notification" from the registrant, the registrar must promptly provide the complaining party with a copy of the counter notification, and inform the complainant that access to the removed material will be restored in 10 business days unless the complainant seeks a court order to remove the content. 17 U.S.C. 6 512(g)(3). The "counter notification" must comply with the same requirements as the original notice of infringement.

One important caveat for copyright holders involves misuse of the DMCA process. Section 512(f) of the act creates liability for "[a]ny person who knowingly materially misrepresents under this section (1) that material or activity is infringing, or (2) that material or activity was removed or disabled by mistake or misidentification." See *ALS Scan, Inc. v. RemarQ Cmty.*, 239 F.3d 619, 625 (4th Cir. 2001) ("To the extent that ALS Scan's claims about infringing materials prove to be false, RemarQ has remedies for any injury it suffers as a result of removing or disabling noninfringing material."). "Knowingly" means that a party actually knew, should have known if it acted with reasonable care or diligence, or would have had no substantial doubt had it been acting in good faith, that it was making misrepresentations." *Online Policy Group v. Diebold, Inc.*, 337 F.Supp.2d 1195, 1204 (N.D.Cal. 2004) (finding misuse when DMCA notice referenced clear fair use). Consequently, copyright holders should first ensure that their copyright is indeed being infringed, before filing a DMCA complaint.

**Framing & Linking**

Another common issue relating to copyright infringement (and to trademark infringement as well, since these areas sometimes overlap) deals with the practice of "framing," which occurs when one website incorporates another website's pages into a browser window with the first site's own content. The website with



the frame may post navigation tools, text, trademarks and/or advertising that the framed website is unable to control. As more of the second site is incorporated into the first, the possibility that users may become confused over affiliation, endorsement or sponsorship becomes stronger. On the other hand, it may be that the marketplace understands frames simply as a way to feature another site which conveys no implication of affiliation or endorsement. The unauthorized use of framing has been challenged under a variety of legal theories, including copyright infringement, but these cases have always settled without final resolution of the copyright infringement issue (*see* discussion *infra* on cases resolving the issues of trademark infringement and/or dilution). Suffice it to say, framing can certainly form the basis for a copyright infringement suit, and may open the framer to unwanted liability.

Rather than reproduce another website within a frame, the practice of “linking” merely provides a hypertext link to a third-party website. While many civil libertarians have argued that linking is a form of free speech which serves as an “information location tool,” many companies have felt threatened by the practice and have filed suit for infringement. Perhaps the most famous case, *Ticketmaster v. Microsoft*, involved an entertainment website maintained by Microsoft which linked to the order form page at Ticketmaster’s site in order to allow users to easily order tickets to events described on Microsoft’s site (this practice was referred to as “deep linking” since it bypassed Ticketmaster’s main homepage). *See Ticketmaster Corp. v. Microsoft Corp.*, No. 97-3055 DDP (C.D. Cal. Apr. 29, 1997). Once again, the parties settled before the case could be tried on the merits. However, subsequent case-law has found that linking does not constitute copying and can therefore not support an action for copyright infringement. *See e.g., Online Policy Group v. Diebold,*

*Inc.*, 337 F.Supp.2d 1195, 1202 n.12 (N.D. Cal. 2004) (“Hyperlinking per se does not constitute direct copyright infringement because there is no copying.”); *Perfect 10 v. Google, Inc.*, 416 F.Supp.2d 828 (C.D. Cal. 2006) (use of “in-line links does not constitute a ‘display’ of the full-size images stored on and served by infringing third-party websites.”). In sum, reproducing someone else’s content may create liability for copyright infringement, while merely providing links to that content will not.

## FILESHARING

### Introduction

Filesharing is really a type of copyright infringement, but it represents such a unique challenge for clients that it deserves special attention. Filesharing involves the use of peer-to-peer (“P2P”) networks, which allow for the wholesale copying and distribution of protected works on a massive scale. P2P networks rely either primarily or entirely on the computing power and bandwidth of end-user participants, and not on traditional monolithic servers. In essence, when a user installs P2P client software, their personal computer becomes a mini-server which joins with legions of other mini-servers to populate and manage the network.

If you are in the business of content creation or distribution you have no doubt heard a great deal about P2P networks. The technology underlying these networks, their legal status, and their future as means for distribution all depend heavily on copyright law. If your business provides networked software capable of enabling distribution of copyrighted works, you may have wondered about your own liability as to copyright infringement. As set forth below, the law of indirect copyright infringement has evolved considerably since *Sony v. Universal City Studios*, and recent cases such as *MGM v. Grokster* have made the

question of secondary liability much more fact-specific and consequently more uncertain than ever.

### Traditional Copyright Law and Direct Infringement

The very nature of P2P filesharing networks invokes questions of copyright law, since the digital files transferred by these networks are fixed and usually qualify as original works of authorship. Furthermore, the copying and transmission of copyrighted works through P2P systems certainly involves reproduction and distribution, and may also constitute public performance and display of these works. If users of this technology merely employ the P2P network to distribute their home movies, vacation photos, or term papers, they are reproducing and distributing their own copyrighted works, and as such cannot infringe. However, in uploading or downloading any other copyrighted work, the potential for direct infringement exists. “Anyone who violates any of the exclusive rights of the copyright owner \* \* \*, is an infringer of the copyright.” 17 U.S.C. 6 501.

Practically speaking, many, if not most, of the files shared on P2P networks are copies of copyrighted music and movies. Given the sheer volume of traffic on such networks, the extent of cyber piracy is truly mindboggling. With such clear cut violations of copyright law, it would seem rather straightforward for content providers to enforce their rights by suing individual users, and indeed many have, most notably the Recording Industry Association of America (“RIAA”). However, filing suit against individual users may prove difficult given the decentralized nature of most P2P networks and the various uses to which they may be employed. Additionally, the scale of piracy suggests that any successful strategy to discourage direct infringement by individuals would require the commencement of numerous costly lawsuits. Further, “fishing” for a large number of individual





infringers will inevitably ensnare some sympathetic users, thus presenting public relations problems as well.

The P2P network vendor makes a much more attractive target. While there are countless P2P users, there exist only a small number of P2P network vendors, and therefore a single well-fought lawsuit has the potential to terminate an entire filesharing ecosystem. In the case of *pure* P2P networks, or those in which the vendor has no direct role in the copying or transmission of the files being shared, the vendor cannot be held liable for direct infringement. However, copyright law sometimes reaches beyond the actions of the direct infringer to those indirectly involved in the infringing activity. Consequently, P2P network vendors may be liable for indirect infringement.

Under copyright law, indirect liability exists in three distinct forms: contributory infringement, vicarious liability, and inducement.

#### **Contributory Infringement: The Sony Defense**

Contributory infringement, as with all forms of secondary liability, requires the existence of a valid copyright and an act of direct infringement by some party. Once this act of direct infringement has been established, an aggrieved copyright owner may assert contributory infringement against a defendant who "with knowledge of the infringing activity, induces, causes, or materially contributes to the infringing conduct of another."

*Gershwin Publishing Corp. v. Columbia Artists Management, Inc.*, 443 F. 2d 1159, 1162 (2d Cir. 1971). The knowledge element requires a showing that the accused contributory infringer knew of the underlying acts of direct infringement, and this element can be satisfied by proving either actual knowledge or that the defendant reasonably should have known in view of the circumstances. At the very least, a contributory infringer must have some information concerning the infringing

activity and the knowledge element cannot be proved merely by pointing to the product's infringing capability. Finally, the accused contributory infringer must have materially contributed to the end-user's direct infringement, though courts have found that merely providing the facilities used by the direct infringer is sufficient. The materiality requirement of contributory infringement, as it relates to software, would suggest that companies merely providing software capable of infringement make a material contribution to this infringement.

The landmark case dealing with contributory infringement is *Sony Corporation of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), sometimes referred to as the "Betamax case." In the 1970s, Sony created the video tape recording format known as Betamax, which would later be replaced by VHS. Various content providers, including Universal Studios and the Walt Disney Company, sued Sony alleging secondary liability based on Sony's manufacture of a device capable of copyright infringement. In this case the Supreme Court ruled that manufacturers of consumer video recorders could not be held liable for contributory infringement because the devices were capable of substantial non-infringing use, namely, Sony's customers could make authorized copies of complete television shows for purposes of time-shifting, *i.e.*, watching the program at a later time, which is a legitimate act of fair use.

While the *Sony* decision predates widespread adoption of the Internet and P2P networks, it nevertheless applies to these enabling technologies, since P2P networks are capable of unauthorized distribution of copyrighted works as well as the legitimate distribution of properly licensed works. Holding software companies liable for the unlawful acts of end-users, especially in the case of general purpose software, would impose a heavy burden on these companies. The *Sony* case pro-

vides a defense for software makers, so long as they can show that their products are capable of substantial non-infringing use. In determining whether an accused product is capable of substantial non-infringing use, the Supreme Court did not emphasize the relative proportion of uses which are non-infringing, but rather examined whether the technology was merely *capable* of substantial non-infringing use.

An example of *Sony's* application to the realm of P2P software can be seen in the case of *In re Aimster Copyright Litigation*, 334 F.3d 643 (7th Cir. 2003). In upholding the lower court's preliminary injunction, the appeals court refused to apply the *Sony* defense because the P2P vendor had failed to introduce evidence of non-infringing use by its customers and clearly had knowledge of its customers' infringing use. Concerning the knowledge requirement, the court noted that Aimster provided customer tutorials specifically demonstrating the downloading of copyrighted works, and that while the company could not monitor its customers' use because of software encryption, the encryption amounted to "willful blindness" and could not be used as a defense. Aimster's failure to introduce evidence of non-infringing use was enough to prevent reliance on the *Sony* defense, but the court went on to suggest that the *Sony* defense requires an evaluation of the proportion of non-infringing uses; seemingly contradicting the *Sony* decision.

Obviously, some uncertainty remains concerning whether substantial non-infringing use is determined based on a product's *capability* or on its *primary use*. Content providers continue to argue that software distributors cannot claim the *Sony* defense when they know their product is primarily used for copyright infringement and software distributors continue to argue that they have no liability so long as their products are capable of substantial non-infringing



use. Furthermore, as set forth below, subsequent cases have served to narrow the *Sony* defense so that defendants may be found secondarily liable despite the substantial non-infringing use of their products.

**Vicarious Liability: The *Napster* Case**  
Vicarious liability for copyright infringement arises from the same legal principles that hold employers responsible for the actions of their employees. Once the predicate act of direct infringement has been shown, this form of secondary liability may be applied where a defendant has the right and ability to control the direct infringer's acts and receives a direct financial benefit from the infringement. See, *Shapiro, Bernstein & Co. v. H.L. Green Co.*, 316 F. 2d 304, 306 (2d Cir. 1963). Unlike contributory infringement, knowledge is not an element of vicarious liability, which creates a strong incentive for P2P vendors to monitor and police their own networks, since defendants may be vicariously liable even if completely unaware of the infringing acts of their customers.

The seminal P2P case in the area of vicarious liability, and certainly the most famous case from the standpoint of media exposure, is *A&M Records v. Napster*, 239 F.3d 1004 (9th Cir. 2001). The defendant, Napster, was a P2P company started by Shawn Fanning, a freshman computer science major at Northeastern University. The client software allowed users to upload and download digital music files in compressed format. The technology underlying Napster was known as "first generation P2P" or "hybrid P2P," since it used a central server to maintain information on peers and respond to requests for information. The peers themselves were responsible for hosting the content, informing the central server of available content, and distributing content to other peers when requested. The central Napster server acted as an index of sorts, and never actually stored or transmit-

ted the copyrighted works. Napster was sued by major content providers on the grounds of both contributory infringement and vicarious liability.

First, as to the charge of contributory infringement, the court found that acts of direct infringement were occurring, that defendant had knowledge of these acts, as evinced by internal company e-mails and notice provided by the RIAA, and that Napster materially contributed to this infringement by providing the software. Napster argued that substantial non-infringing use existed, namely, it cited three specific examples of purported fair use: (1) *sampling*, where users download music to determine whether they want to purchase it, and supposedly delete the file if they decide not to; (2) *space-shifting*, where users already own the copyrighted work and are merely securing a digital copy to it; and (3) *permissive distribution*, where the author of the copyrighted work consents to its distribution. The court held that sampling was not fair use because the samples were actually permanent copies of the sought after works, and that space-shifting was not fair use because the conversion to a digital format was not merely personal storage since it was shared with the world. Nevertheless, the court found that substantial non-infringing use did exist. However, the court refused to allow reliance on the *Sony* defense because Napster had actual knowledge of the infringement and the ability to stop it, but chose not to do so. The court distinguished *Sony* in noting that manufacturers of VCRs have no control over how customers use their products, while Napster, as the intermediate central server, had control over the user registry and could exercise that control to discourage piracy.

It was this control element, together with a pecuniary stake in the infringement that also sustained a charge on vicarious liability against Napster. Concerning the first element, right and ability to control, the court found that

Napster demonstrated the requisite control in its ability to terminate user accounts and block user access to the system. The court noted that Napster "should bear the burden of policing the system within the limits of the system." *Id.* at 1027. At a minimum, the court held that such policing should include blocking individual users who commit infringing acts. Concerning the second element, direct financial benefit, the court found that "financial benefit exists where the availability of infringing material acts as a draw for customers" and Napster's growing user base, despite the free-to-use nature of the network, made the company more attractive to investors. *Id.* at 1023. It is apparent from this case that the levels of control and financial benefit required for a charge of vicarious liability are not particularly high.

Consequently, if you possess the right and ability to control your users and derive any kind of benefit from an increased user base, you must exercise that control or risk being secondarily liable. If you fail to do so, the existence of substantial non-infringing use will not serve as a defense to contributory infringement and a claim of ignorance will not protect you from vicarious liability.

#### **Inducement: The *Grokster* Case**

If *Napster* was decided primarily on the defendant's ability to control access to its software platform, it was only a matter of time before a decentralized P2P network was developed to absolve the vendor of this liability. One such "second generation P2P" or "pure P2P" network was created by Grokster, where each individual peer acted as both client and server. Most notably, Grokster did not maintain a central server managing the network or a central router, and could not block individuals from using the platform, apart from ceasing development of its client software.

The inevitable copyright infringement case against Grokster, *MGM*





*Studios, Inc. v. Grokster, Ltd.*, 125 S.Ct. 2764 (2005), saw the P2P vendor sued by 28 of the largest content providers, led by Metro-Goldwyn-Mayer. Both lower court decisions held that Grokster was not liable under contributory infringement because of the existence of substantial non-infringing uses, a.k.a. the *Sony* defense. Despite having an opportunity to clarify application of the *Sony* defense, the Supreme Court ignored plaintiffs' original plea of contributory infringement and vicarious liability and instead created a new form of secondary liability in copyright infringement, namely, inducement. Writing for the majority, Justice Souter held:

"[O]ne who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties."

Stated another way, a P2P vendor may be liable for inducement, based on underlying acts of direct infringement by end-users, if the vendor demonstrates an intent to promote copyright infringement and takes affirmative steps to encourage the same. First, concerning intent, it is well settled that this element may be proved by circumstantial evidence. See *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1272 (Fed. Cir. 1986) ("It is hornbook law that direct evidence of a fact is not necessary. Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence." (citations omitted)). Of course, this means that any intent analysis will necessarily be fact-specific. For example, in *Grokster*, the Court found the following evidence relevant to its intent analysis:

- Promotional efforts by Grokster seeking to woo former users of the defunct

Napster P2P network, which was "a known source of demand for copyright infringement." *Grokster*, 125 S.Ct. at 2768.

- Company e-mails and promotional materials "clearly voiced the objective that recipients use [the platform] to download copyright works." *Id.* at 2772.
- "[N]o evidence that either company made an effort to filter copyrighted material from users' downloads," even though Grokster could have embedded some form of filtering into the client. *Id.* at 2766.
- A direct pecuniary interest in the infringing acts, i.e., copyright infringement was a hugely popular use that attracted a larger customer base, which in turn increased advertising revenue.

Next, concerning the required affirmative acts, the Court looked to defendants' statements and actions for evidence of encouragement to infringe, and found the following:

- Promotional efforts by Grokster seeking to woo former users of the defunct Napster P2P network, which was "a known source of demand for copyright infringement." *Id.* at 2769.
- Company newsletters containing links to news articles discussing use of the software in copyright infringement.
- Customer support in which technicians helped users solve technical problems relating to the location and playback of copyrighted works.

While the Court unanimously held that the defendants were secondarily liable for copyright infringement under a theory of inducement, there remained considerable disagreement concerning whether defendants could claim the *Sony* defense and thereby defeat a charge of contributory infringement. Justice Ginsburg, joined by Justices Kennedy and Rehnquist, averred that "[t]his case dif-

fers markedly from *Sony*" due to the lack of evidence on non-infringing use, and therefore that the defendants could not claim the *Sony* defense. *Id.* at 2785. In contrast, Justice Breyer, joined by Justices Stevens and O'Connor held that "a strong demonstrated need for modifying *Sony* (or for interpreting *Sony*'s standard more strictly) has not yet been shown" and that the defendants could still use the *Sony* defense and dodge liability for contributory infringement. *Id.* at 2796. Despite this uncertainty, it can at least be said that decentralized P2P networks will be liable for inducement when the P2P vendor has demonstrated the required intent and associated acts directed toward the promotion of copyright infringement.

Subsequently, the court in *Montype Imaging, Inc. v. Bitstream, Inc.*, 376 F.Supp.2d 877 (N.D.Ill. July 12, 2005) applied the *Grokster* inducement analysis in holding that a distributor of font management software was not secondarily liable for its customers' copyright infringement of certain font types because there was no evidence that the defendant had the requisite intent or committed affirmative acts tending to encourage infringement. Notably, the evidence suggested that the defendant in *Monotype* hadn't even been aware of the alleged acts of direct infringement until service of the lawsuit.

One of the most recent cases dealing with the issue of secondary liability in copyright infringement is *Perfect 10 v. Google, Inc.*, 2006 WL 454354 (C.D.Cal. Feb. 17, 2006). In this case, a pornographic website operator sued Google for infringement and indirect infringement because Google's search engine displayed thumbnail depictions of the plaintiff's copyrighted photos on the court of indirect infringement. The court in *Google* held that the defendant was not vicariously liable because, while Google certainly profited from the infringement, it had no right to exercise control over the infringement, since its search engine merely displayed



the content of the direct infringers' web-pages. The court then went on to examine the issue of contributory infringement and cited the *Grokster* opinion as suggesting that the *Sony* defense is unavailable to defendants showing statements or actions directed at promoting infringement. As discussed above, the *Grokster* opinion left open this question, and was settled instead on a theory of inducement. Therefore, it appears that the court's decision in *Google* may have incorrectly relied on contributory infringement instead of the *Grokster* theory of inducement. Arguably, this decision is an anomaly in the context of other cases dealing with secondary liability.

#### Questions for the Practitioner

The foregoing discussion should inform your analysis of secondary liability in copyright infringement so that when faced with a potential infringement suit, whether you are asserting or denying liability, several important questions may come to mind. First, are there underlying acts of direct infringement? Any successful suit averring secondary liability must first prove a predicate act of direct infringement by some party. Additionally, if the P2P vendor makes or distributes copyrighted works, even if only through storing such works in the RAM of a centrally managed file server, then the vendor may be liable for direct infringement independent of the infringing acts of its users.

Second, is the P2P vendor likely to be held liable for contributory infringement? Contributory infringers must have knowledge of the infringing acts of their users, must materially contribute to the infringement, and the vendor's product must not be capable of substantial non-infringing use. The knowledge requirement may be satisfied by proving either actual knowledge or that the vendor reasonably should have known of the infringing acts in view of the circumstances. Next, the materiality element may be proved merely by the

distribution of client software capable of infringement. Finally, uses such as time-shifting, sampling, space-shifting, or permissive distribution, may constitute fair use and therefore proof of substantial non-infringing use, thereby serving as a defense to contributory infringement (note that not all of these examples were considered fair use in the *Napster* case). However, the *Sony* defense is not available to defendants who are found to be vicariously liable.

Third, is the P2P vendor subject to vicarious liability? Vicarious liability arises when the defendant has the right and ability to control access to its network by end-users, but fails to exercise this control against known infringers. Additionally, a successful suit averring vicarious liability must also prove that the defendant had a pecuniary interest in the infringement, though courts are likely to deem an increase in popularity based upon infringement as sufficient financial interest. Again, the *Sony* defense is not available to the vicarious infringer, and therefore such a defendant may also be found liable for contributory infringement.

Finally, is the P2P vendor likely to be held liable for inducement? Inducement requires both an intent to promote infringement combined with affirmative steps taken to encourage the same. The court will look primarily to circumstantial evidence for proof of intent, including, for example, advertising efforts targeting infringers, internal e-mails and promotional materials, a lack of filtering technology, and a direct financial interest in the infringing acts. Additionally, proof of affirmative acts may take the form of promotional efforts, news releases, and customer support. It is unclear whether the *Sony* defense remains available for defendants held liable for inducement.

#### The Evolving Threat: Third Generation P2P

Third generation P2P networks, also known as "open-source P2P," allow users

to participate in the actual development of the client application, and there exists no central server system, or even a corporate citizen to shepherd the technology. Additionally, several of these P2P networks have incorporated encryption so that users may form secure, invitation-only filesharing rings, further limiting the ability of content providers to determine the extent of illegal filesharing. Two prominent examples of such third generation P2P are eMule and BitTorrent.

The open-source developers of these filesharing applications disclaim any knowledge of their use, though they may be directly responsible for acts of infringement through their own personal use of the software. Additionally, there exist many strong arguments for the legitimate uses of applications such as eMule and BitTorrent. Consequently, these developers and collaborators are unlikely to be found guilty of contributory infringement. Unfortunately, the nature of the open-source community, namely, its non-profit character and lack of a business model, also makes a finding of vicarious liability highly unlikely. Similarly, the lack of a proper "vendor" or corporate parent would appear to defeat the elements necessary for a finding of inducement as well.

Without a corporate intermediary, copyright holders have instead relied on suits against Internet Service Providers ("ISPs") and against individual users themselves. It would appear from various media accounts that the suits against ISPs have been relatively successful, especially within the realm of academic computing resources. By putting colleges and universities on notice of the infringement of their students, and with the ever-present threat of litigation, the RIAA has succeeded in convincing most schools to police their own networks. Most major universities now employ monitoring software that can identify P2P activity and limit bandwidth or even terminate access privileges for suspected infringing



ers. In 2003 the RIAA famously sued four students for a total of \$100,000,000,000 dollars based on the statutory infringement damages available to holders of registered copyrights (at \$150,000 per work infringed, these users were sharing more than 600,000 songs over their university's network). While the students eventually settled for \$50,000, the RIAA suits did prove the value of enforcement publicity.

Of course, publicity can be a two-edged sword, and the RIAA has no doubt come to regret some of its broad enforcement dragnets – voluminous suits that have ensnared extremely sympathetic “infringers.” Several suits involving the archetypal “little old lady” have been widely publicized, and there's some evidence that these suits have begun to backfire. Indeed, on July 16, 2007, the RIAA was required to pay attorneys fees and expenses to an accused infringer for the first time, to the tune of \$68,685.23. The RIAA has argued that such press has a deterrent effect on other would-be infringers, though there is little evidence that the RIAA's enforcement activities have impacted the sharing of copyrighted content through P2P networks. Ironically, it would appear that the most successful deterrent against illicit P2P activities has not been actions against software vendors, ISPs, or individual users, but rather innovation within the recording industry itself. Judging from the popularity of digital distribution platforms such as Apple's iTunes, it is clear that a large segment of users want the ability to easily obtain, store and make copies of their entertainment media, and they are willing to pay a price for this convenience. Amazingly, as of February 2008, Apple was the largest retailer of music, irrespective of format, in the United States, surpassing both Wal-Mart and Best Buy. It is likely that continued innovation within the industry has the potential to drastically reduce the incidence of copyright infringement through P2P networks.

### Conclusion

Obviously, some uncertainty still exists regarding the potential secondary liability of P2P networks in copyright infringement, but content providers have largely succeeded in shutting down and curtailing such networks. Business models built around these filesharing systems simply cannot survive the legal uncertainty and constant threat of legal action posed by end-users' acts of direct infringement. Indeed, most of the filesharing system mentioned in this paper are now defunct. However, this may prove to be a pyrrhic victory, as technological developments have already responded to remove the threat of secondary liability. Specifically, “third generation P2P” networks or “open-source P2P” has emerged as the new filesharing threat. With these software platforms, users themselves participate in the development of the client application, and there exists no central server system, or even a corporate citizen to shepherd the technology. Additionally, several of these P2P networks have incorporated encryption so that users may form secure, invitation-only filesharing rings, further limiting the ability of content providers to determine the extent of illegal filesharing. Without a corporate intermediary, it appears the only real solution to preventing this third generation of P2P technology, apart from increasing the convenience and desirability of the content provider's own distribution mechanism, is to file suit against end-users individually.

### TRADEMARK INFRINGEMENT

A trademark is a word, name, symbol, device or any combination thereof which is used to identify and distinguish the goods of one person from goods manufactured or sold by others and to indicate the source of the goods, even if the source is unknown. 15 U.S.C. 6 1127. Section 43(a) of the Lanham Act prohibits the use of “any word, term, name, symbol, or device \* \* \* or any false designation of

origin, false or misleading description of fact, or false or misleading representation of fact, which (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities.” 15 U.S.C. 6 1125.

### Framing & Linking

The practices of framing and linking were discussed *supra* within the context of copyright infringement. When one website uses frames to incorporate the trademarks, products, or services of another's website, users may be confused regarding the source of the pages or of the goods or services advertised. In *Hard Rock Cafe v. Morton*, the defendant was accused of framing webpages from the Hard Rock Cafe within his own website, where he sold similarly themed music CDs. In finding the defendant liable for trademark infringement, the court concluded that “[t]hrough framing, the Hard Rock Hotel Mark and the [infringing site] were combined together into a single visual presentation.” *Hard Rock Cafe, Int'l, Inc. v. Morton*, 1999 WL 717995 (S.D.N.Y. 1999).

The practice of linking touches upon trademark infringement where the link itself uses a word or even design mark from the linked site or product. Courts have often questioned whether such use creates an actionable likelihood of confusion regarding origin, affiliation, endorsement or sponsorship under Section 43(a) of the Lanham Act. Since the factors inherent in the “reasonable likelihood of confusion” test are so factually driven, it is likely that at least some links pose a risk. However, it appears that a hyperlink that simply references another's textual



mark, is understood by the marketplace to mean that a user can find an informative website at the linked location, rather than any implication about affiliation, endorsement or sponsorship. In the *Ford Motor v. 2600 Enters.*, the defendant linked from a disparaging website to the Ford website. The court held that linking

by using a trademarked domain name in programming code neither constitutes a violation of the Ford trademark nor dilution of the mark, and further stated that the federal dilution statute was not intended to allow trademark holders to eliminate linking on the Internet simply because the holder did not like the

domain name of, or content on, the linking webpage. See *Ford Motor Co. v. 2600 Enters.*, 177 F. Supp. 2d 661 (E.D. Mich. 2001).

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## American Legal System: Paralegals

by Deirdre Trotter, CLAS

Compared to the legal profession, the paralegal profession is in its infancy. Attorneys have existed since the 4th Century B.C., but in a much different capacity from what we are familiar with in the 21st Century A.D. The paralegal profession only emerged in the 1960s. Utilization and education of paralegals has not progressed significantly in the last twenty-five years. However, given that the legal profession has been evolving for 2300 years, we must expect there is much room for growth and change in the paralegal profession in the coming years.

The paralegal profession was first defined by the American Bar Association (ABA) in 1986 when the definition of the term "legal assistant" was adopted by the ABA. The term has since been modified to include the term *paralegal* in the definition. The terms *legal assistant* and *paralegal* are used interchangeably. The ABA's (2004) new definition adopted in 1997 reads as follows:

A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible. (p. 3).

However, the ABA was a little behind in

its acceptance of the paralegal profession. The State of Texas formed the "first paralegal division of a state bar in the United States in 1981" (Johnson, 2006, p. 884), five years prior to the ABA definition. In 2005, the State Bar of Texas Board of Directors, the State Bar of Texas Standing Committee on Paralegals, and the Paralegal Division of the State Bar of Texas, adopted a new definition for *paralegal*:

A paralegal is a person, qualified through various combinations of education, training, or work experience, who is employed or engaged by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such person, an attorney would be required to perform the task.

In addition, in April 2006, the State Bar of Texas Board of Directors approved amending the paralegal definition by including a set of standards, which are "intended to assist the public in obtaining quality legal services, assist

attorneys in their utilization of paralegals, and assist judges in determining whether paralegal work is a reimbursable cost when granting attorney fees" (State Bar of Texas, n.d.). The standards, while not mandatory, include: Support for Education, Training, and Work Experience; Delegation of Substantive Legal Work; and Consideration of Ethical Obligations. Many states are joining Texas in suggesting minimum qualifications or standards for paralegals. These states include: California, New Mexico, North Carolina, Ohio and Oklahoma. The state of New Mexico has been especially diligent with regard to specifying who can call themselves paralegals, going so far as to "discourage attorneys from using the designation of 'paralegal' for any support staff not meeting the official definition and qualifications" (Crossett, 2006). New Mexico requires at least seven years of work experience or a defined minimum degree of education with fewer than seven years of work experience before an individual may use the title of paralegal. The suggested standard in Texas is four years of work experience. However, this is only a suggestion. In Texas almost anyone can be called a paralegal. Many unqualified individuals are calling themselves paralegals or the attorneys who employ them are calling them paralegals. One example is the person who had been trained as a medical transcriptionist, who had absolutely no legal experience, but was told by her employing attorney that she was a paralegal.

A few states have attempted to pass regulations that would require registration or certification of paralegals or even mandatory licensing (Crossett, 2006). Wisconsin attempted to require manda-

tory licensing for paralegals. However, "On April 7, 2008, the Wisconsin Supreme Court denied the petition on a unanimous voice vote...the petition to regulate and license paralegals in Wisconsin." If the regulation had passed, no one in Wisconsin could have used the title paralegal unless he/she was licensed by the state of Wisconsin. The efforts to obtain this regulation started in 2000 (Paralegal Association of Wisconsin, n.d.). Florida passed its petition to allow for Registration of Paralegals in March 2008, (Supreme Court of Florida, 2007, p. 3). Voluntary registration of paralegals in Indiana is still under debate.

Any person found to be acting as an attorney without the proper credentials can be found to be guilty of the "unauthorized practice of law." Even something as simple as telling someone how to complete a form may be found to be the unauthorized practice of law. Four states have passed statutes that allow a few specific law-related tasks to be performed by non-lawyers. These states are Arizona, California, Florida and Washington. Washington uses the term *legal technician* that separates the function of "legal document preparer" from that of a paralegal because a paralegal works under the supervision of an attorney, whereas the legal technician works independently. These statutes were passed to protect individuals who provide legal document preparation services to the public from prosecution for the unauthorized practice of law.

Some paralegal organizations such as the National Federation of Paralegal Associations (NFPA) believe that paralegals can and "should play an integral role in the delivery of cost-effective legal and law-related services." NFPA adopted a position statement on Non-Lawyer Practice. NFPA supports legislation that allows exceptions from the unauthorized practice of law; that non-lawyer practice rules should contain minimum criteria; that non-lawyer practice rules should require advanced competency testing in specialty practice areas; and that any traditional paralegal (working under the supervision of an attorney) would be

exempt from rules applying to non-lawyer practice (NFPA, n.d.). NFPA believes that access to the legal system would be improved by allowing non-lawyers to provide "limited legal and law-related services directly to the public, including guidance and/or direction within a certain scope, according to their expertise, experience and education" (NFPA, n.d.).

There is a general belief that there is a serious problem with "equal access to justice" by many poor and low-income Americans. With attorneys charging \$300.00 plus per hour for legal services, it is no wonder that some find it too expensive to seek legal advice or assistance. Of course, many new attorneys would charge much less than \$300.00 per hour; however, with their inexperience and learning curve, an individual would probably be money ahead hiring an experienced attorney and paying the higher attorneys' fees. However, an alternative to either of these options would be going to a qualified paralegal who would charge a much lesser rate, but who would have years of experience equal to that of an experienced attorney.

Whether or not a paralegal is allowed to practice law in a limited capacity will be determined much further in the future. It is not a possibility that will be brought to bear without circumventing the "lawyer" system currently in place. Attorneys control the legislatures and until attorneys can see that there is a necessity to allow paralegals to practice in a limited capacity, no such legislation is likely to pass. It is unlikely that attorneys would seek to replace themselves. However, if non-lawyers see the benefit

and stir the legislatures to take action, paralegals might be practicing in a limited capacity, without attorney supervision, in the distant future.

The fact is there is much progress to be made in the simple use of paralegals by attorneys under the current legal system. Many attorneys do not understand the profession, how paralegals should be used and what skills and abilities the paralegal should bring to the position. This was summed up by the Honorable Judge Xavier Rodriguez, US District Judge for the Western District of Texas, when he said, "Even after 25 years, I am surprised to see that there is not a true understanding of clerical and administrative tasks by lawyers....Lawyers need to have an understanding and appreciation for what [paralegals] can bring to the team" (Collins, 2006).

A qualified and experienced paralegal can do much of what an associate attorney can do (and sometimes more with less assistance from the attorney), such as draft pleadings including, Petitions, Answers, Motion to Transfer Venue, Motions for Summary Judgment, Motions to Compel; perform legal research and draft legal memorandums. Of course, in some instances attorneys want the associate to draw a legal conclusion that might be considered the unauthorized practice of law by a non-lawyer. However, a qualified paralegal could draft a legal memorandum, present both sides of the law and allow the lawyer to draw the legal conclusion.

It is important that an attorney maintain a relationship with the client. I think many attorneys who do actively use



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paralegals in their practice fall short in allowing the paralegal to be the sole contact with the client with few exceptions. However, if done properly, a paralegal can be in contact with a client, participate in drafting discovery responses and other client-intensive activities which would lower the costs involved. In this regard, some insurance companies have software that reviews lawyer time entries and rejects any lawyer time spent doing activities which the company believes should be performed by a paralegal, such as drafting discovery responses. These companies apparently believe that all discovery can and should be drafted by a paralegal with the lawyer only billing for client conferences and review and finalization of the draft.

Some attorneys hire certified paralegals because they want someone with the training and experience, but then assign them to duties like dictation and filing. A certified paralegal can do anything an attorney can do except: quote legal fees, represent a client in court, give legal advice or accept a case (this falls under the attorney-client relationship). Of course, attorneys can type their own documents, but it would be a wiser use of their time to allow qualified paralegals to draft correspondence, pleadings, discovery or other legal documents. The attorneys could then review and revise as necessary. Qualified, specialized paralegals can and do bill their time at rates over \$100.00 per hour. However, with specialized attorneys billing their time at rates of \$300.00 or more, it is obvious that utilizing a paralegal is cost effective for the client. Some believe that billing the paralegal's time takes away from the attorneys' billable time, but this is not the case. If you have a paralegal billing an eight-hour day, the attorney should likewise be able to bill an eight-hour day. The attorney's time will be spent reviewing and revising, giving legal advice to clients in meetings or over the telephone, making site visits and/or meeting with clients. Whereas the paralegal's time would be spent drafting, performing legal research, reviewing records and preparing sum-

maries, preparing exhibits/documents for use at depositions and at trial. Who benefits from the paralegal's eight hours? The attorney. The paralegal is only receiving a portion of his/her hourly billing. The balance goes to the attorney, in most cases more than paying the paralegal's salary. In some cases, the paralegal's salary and other overhead might be covered by the paralegal's billable hours, leaving more of the attorney's fees for the attorney. Of course, even in law offices where most of the income is from contingent fees and not from hourly billing, a qualified paralegal is a tremendous asset freeing the attorney to focus on winning cases and bringing in larger awards/settlements.

A "qualified" paralegal can be an enormous asset to an attorney. When used properly, a qualified, trained and educated paralegal can increase a firm's productivity and earnings and assist the lawyer with providing exceptional legal services to their clients, helping them to win more cases, maintain his/her reputation and improve the overall effectiveness of how the lawyer delivers legal services. However, it is apparent that required standards will ultimately need to be passed by each state in order to promote quality in the paralegal profession, for without required standards, some attorneys will continue to hire unqualified individuals, call them paralegals and bill for their time. The paralegal profession has a lot of growing to do and it will be as difficult for the profession to continue evolving without required standards as it would have been difficult for the legal profession to have evolved without requiring individuals to pass the bar to practice law.

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*Deirdre Trotter, CLAS works for Field, Manning, Stone, Hawthorne & Aycock in Lubbock.*



# On What Side of the Generation Divide Do You Reside?

By Susan Johnston

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*Excellent communication skills are essential for today's paralegal. What you expect and how you communicate your wishes may depend on when you were born.*

**T**oday's law offices often include workers from several different generations: Boomer (or Baby Boomers), who were born between 1945 and 1964; Generation X, born between roughly 1965 and 1980; and Generation Y (or sometimes the Millennials), who were born after 1980.

Sometimes, the different expectations and experiences of each generation can lead to conflict. "Probably the most common complaint about newly recruited Y's is their unwillingness to 'put in their time' before being given major responsibilities," says Harvard MBA Tamara Erickson, author of *Retire Retirement: Care Strategies for the Boomer Generation Today* (Harvard Business School Press, 2008). "Many Boomers think Generation Y's have ridiculous expectations of the level of responsibility that they'll be given, and little willingness to pay their dues."

Regina H. Ellis, a senior paralegal in Birmingham, Ala., who identified herself as part of Generation X, agrees with that assessment. "It seems like the younger paralegals expect so much," she says. "They think that some things are beneath them."

Ellis recounts a story about a younger paralegal who graduated a few years ago and objected to compiling a table of contents because she thought it was "crap work." According to Ellis, "Nobody is too good to do that. I feel like I had to pay my dues, so they should, too."

Another common concern is that younger workers might not bring the same level of accuracy and thoroughness

to their work as more experienced ones. "Growing up, I had it drilled into me that everything had to be done correctly: the form of a letter, the spelling and punctuation," recalls Deborah Hanley, a Boomer paralegal in Framingham, Mass. "[New workers have] less of a focus in that area and it does cause me concern. But I'm very reluctant to stereotype. I think what's missing is how critical a clear communication is, particularly in the legal field."

## Time Management and Tech Savvy

However, many Boomers like Hanley find that younger workers bring positive attributes to their work, too. "We've had the benefit of working with some Millennials, and they strike me as very bright and very engaged," observed Hanley. "They're very sharp in terms of being able to manipulate multiple things at the same time. If I compare them to myself when I first arrived here, I found it very nerve-wracking to juggle multiple things. Many of them are more adept at prioritizing and multi-tasking."

In addition to their adeptness at juggling multiple projects, recent college graduates often bring a high degree of computer and internet knowledge. Kim Eshleman, a Generation Y paralegal in Raleigh, NC thinks "recent grads entering the paralegal field have more exposure to technology due to the nature of the paralegal training programs available." Many members of Generation Y grew up with computers in their home and school, so using these programs for research and other work is often second nature to them.

"If it's computer work," says Hanley, "they take to it like a duck to water. They may require a little explanation of how it relates to what we're doing. It's important

for older paralegals to stay current on computers and software programs so they can keep up with the changing pace of the legal process and the demands of their caseload."

## Mentoring Millennials

Often, the key to bridging generation gaps is open communication and mutual respect. "My basic advice would be for Boomers to invite Generation Y's to ask them questions or reach out when they need help," Erickson advises. "An informal approach, what I like to call a 'gift culture' is more effective than formal mentoring programs, although they can be helpful as well."

Working with Attorney Lauren Stiller Rikleen on environmental cases at the Bowditch Institute for Women's Success, Hanley has seen positive examples of attorneys and paralegals mentoring younger people interested in the law. "Lauren is always extremely supportive. I hope that I pass that on to the young. What's exciting is that they're very motivated and very interested in what we do."

Eshleman has benefited from working alongside experienced paralegals. "There have been two more senior paralegals in my office, both of whom I have considered mentors," she says. "Both took the initiative to encourage me to move forward in the field and have been invaluable resources in my professional development. They've given me advice ranging from how to accomplish the simplest tasks to tips on how to manage stress and interact with attorneys."

Like Eshleman, many Millennials appreciate advice from older workers and respect their seniority. "As a paralegal just beginning my career, I'm still learning my strengths, gaining experience and learning what questions I need to ask to complete a specific task," explains Eshleman. "It seems that Generation Y and Baby Boomer paralegals have the experience necessary to feel confident in their abilities and comfortable in an area of practice."

## Improving Your Work Life

Though they may not have the confidence

or experience of a senior paralegal, some recent graduates expect to negotiate for a higher salary and more vacation time before they start their first job. This attitude can be off-putting to some older workers. Earlier generations accepted their entry level status but career counselors and parents have taught Generation Y to aim high. "Many of us had to work for

years and years before we could get four weeks off and get flex time," says Hanley.

Of course, Hanley points out that this mentality has an upside, too, especially for paralegals seeking higher pay and greater work/life balance. "I think that in the Millennials, we have a natural ally," she says. "They've seen their parents struggle professionally and they're

going to come expecting different things. We're all trying to improve employment situations. I think the Millennials are far less tolerant of some of the things that Boomers had to tolerate, so I think it's going to be a positive influence."

*Susan Johnston is a Boston-based freelance writer.*

## Notable Bills of the 2009 Legislature

By Heidi Beginski, TBLS Certified Paralegal

**F**ollowing is a look at some bills that were passed, and some that did not pass, in the regular session of the 81st Texas Legislature.

### *Passed and Signed Into Law*

**Military kids:** Makes it easier for children of transferring military members to enroll in new schools by allowing Texas to join an interstate compact on educational opportunities for military children.

### *Passed, Becoming Law Without Governor's Signature*

**Booster seats:** Requires that children under age 8 or under 4' 9" tall to be secured in a booster seat when riding in a passenger vehicle. Raises the current age limit from 4.

### *Passed, Headed to Voters*

**Eminent domain:** Allows voters to decide whether to amend the state constitution to place some limits on when governments can take private property.

### *Passed, Awaiting Action by Governor*

**State budget:** A \$182 billion, two-year spending plan that includes \$12 billion in

federal economic stimulus money pays for scores of state services but covers mostly education and health care.

**Top 10 percent:** Scales back the law allowing automatic college admission for students in the top 10 percent of their high school graduating class.

**Disabled veterans:** Provides homestead property tax exemptions for disabled veterans.

**Human trafficking prevention:** Establishes a task force to come up with policies and procedures to prevent and prosecute human trafficking.

**Teen tanning bill:** Bans anyone under 16.5 years old from using a tanning bed.

**Military tuition:** Expands tuition exemptions for Texas military veterans and their spouses.

**School accountability:** Changes high school graduation and grade promotion requirements; requires students to pass standardized tests to be promoted to the next grade but reduces some of the high stakes currently connected to the testing.

**School supplies:** Adds backpacks and school supplies to the annual August sales tax holiday weekend that already includes clothing purchases.

**Tier-One universities:** Creates funding pools and incentives for emerging research universities to advance to nationally recognized status.

### *Failed*

**Guns on campus:** Would have allowed concealed handgun license holders to bring their guns to college campuses.

**Voter ID:** Would have required Texas voters to present photo identification or two non-photo alternative forms of ID before casting a ballot.

**Casino gambling:** Would have allowed Las Vegas-style casinos, slot machines at race tracks and casinos on American Indian reservations.

**Smoking ban:** Would have imposed a statewide ban on smoking in most public indoor spaces, including bars and restaurants.

**CHIP expansion:** Would have allowed some families who make too much to qualify for the Children's Health Insurance Program to qualify for the joint state and federal program.

**Smoking age:** Would have raised the legal age limit to buy tobacco products from 18 to 19.

**Government employee birthdates:** Would have exempted government employees' birthdates from release under open records law.

**Sobriety checkpoints:** Would have allowed police to set up sobriety roadblocks in large counties and cities.

**Trans fats:** Would have banned restaurants from packaging, storing or using trans fats to prepare or serve food.

# 2009 Exceptional Pro Bono Service Award

*Sherrie Lacie*

**T**he very essence of Pro Bono work consists of offering your time and talents to benefit another, with no expectation of compensation. Many paralegals commit themselves to Pro Bono work, unselfishly putting other's needs before their own. Sherrie Lacy, the winner of the 2009 Exceptional Pro Bono Service Award has truly lived this service mentality. I spoke with Sherrie to discover what inspired her to generously donate so much of her time and energy to others, year after year.

Upon reflection, she attributes her desire for volunteer work specifically to the trauma she experienced upon losing her father at an early age. Sherrie, a Dallas native, initially began her life long volunteer work with Mental Health and Mental Retardation of Tarrant County in 1970 at the age of 13. Her efforts consisted of assisting special-needs children with art projects at a local recreation center in Arlington. Since she loves all things artistic, she enjoyed sharing the joy of discovering artistic expression with children. This initial experience taught her "volunteer work is about smiles." It shortly became apparent Sherrie has a soft heart for anyone in need, as demonstrated by the 1987 holidays she spent visiting and entertaining residents of Austin-area nursing homes.

It was while living in Texas' Capital that Sherrie was initiated into politics. In 1979, 1983-1985, 1989 and 1995 she worked as a committee clerk on two House Committees and two Senate Committees. From 1985-1988, she worked as the Executive Coordinator for the Texas Young Lawyers Association (TYLA). She supervised and coordinated the work of 60 different committees for TYLA and its Board of Directors, handling correspondence, planning meetings, and managing the budget. She also helped write, edit and prepare exhibits for the annual ABA



*Sherrie Lacy, the recipient, left. Rhonda Brashears, the 2008–2009 PD President, right.*

Awards of Achievement. It was during this time she developed friendships and bonds with attorneys that would last throughout her life.

Her love for the legal field continued to provide inspiration. In 1990, the former Chairman of the Board of TYLA offered her a job as a legal assistant in civil litigation defense. This position allowed Sherrie to discover her knack for detailed document review and finding evidence attorneys needed. While working in this position, Sherrie discovered that defense work is not always about justice, but often about what is "best for the client."

After departing TYLA she volunteered from 1991 to 1992 for the TYLA Liberty Bell Award Committee. From 1992 to 1994, she dedicated her volunteer time to the TYLA Victim-Witness Assistance Committee, doing graphic design of promotional material and coordinating the placement of program materials for access by the general public. In 1992 she became aware of the Texas Star Mentor Program. She convinced the attorney she worked for to participate in the program, with one caveat on her employer's part – she had to do all the work. Not surprisingly, she was more than willing to accept



the responsibility. This State Bar of Texas program provides Mentors to at-risk students. One of the skills that Sherrie felt these students needed to be taught was not only the need to set goals, but how to set those goals. Between her paralegal job, her volunteer work and college, Sherrie had her hands full.

In 1993 her efforts at personal development resulted in Sherrie receiving a Bachelor of Arts degree from the University of North Texas, with a major in Graphic Design and a minor in Advertising. She worked long and hard to accomplish this goal, while using her artistic skills to promote the work of volunteer organizations. Her creative outlet helps Sherrie keep her life balanced.

In 1991 she broadened her volunteer efforts by dedicating her time to the Friends of the McKinney Memorial Public Library. She was Director of the Friends from 1991 to 1992, and President and Director from 1992 to 1993. Her work included the organization of book fairs, summer reading programs, and children's activities and events. In 1993 Sherrie joined Dallas Meals on Wheels delivering Thanksgiving and Christmas meals, work she would continue until her departure from Texas in 2000. From 1995 to 1997 Sherrie was bicycling and expanding this new enthusiasm to fund-raising for the Multiple Sclerosis Society. During this time, the intrepid cyclist took part in three 150 mile bike rides, as well as donating her graphic design and copywriting talents to designing promotional material for the events. She can be proud of the impact of her creative efforts since they substantially increased the turnout for the bike rides.

Continuing with her dedication to the legal field, 1997 found Sherrie working for a civil litigation attorney in Fort Worth. Then in 1998 she was recruited by a former president of TYLA and spent 18 months assisting with the \$9 billion merger of Central and Southwest Services and American Electric Power, two public utility holding companies. A total of fifty-thousand documents were compiled, organized and indexed for submission to

the Department of Justice. After spending two years learning sign language in her "spare time," in 2000 Sherrie assisted the Texas Christian University in their production of the Imagination Celebration, an annual conference for the deaf.

Sherrie moved to Columbus, Ohio in 2001 and worked with an attorney and managing partner of a law firm in the legal field of Public Law. She assisted the attorney in representing clients on legislative matters. She claims the biggest challenge for her during this time was scheduling meetings between attorneys, politicians, and doctors. During her evenings and weekends, she volunteered at various catered events for the First Presbyterian Church of Worthington, and volunteered for a local art committee in Worthington.

Upon returning to Texas in 2004, her commitment to her own growth and that of her profession led her back to civil litigation, where she found work with an insurance defense firm. In 2005, she joined the Paralegal Division of the State Bar of Texas. While working for this firm, she was exposed to and became fascinated with private investigators. Sherrie realized she wanted to combine her paralegal skills with those of a private investigator. She left the firm and studied for her private investigator's license. After becoming a licensed private investigator, the next progression was membership and volunteer work with the Texas Association of Licensed Investigators. She contributed two articles for *The Texas Investigator* on Pretexting, served numerous hours on the Legislative Committee from 2006 to 2009, and was the Secretary from 2007 to 2009.

Never giving up her love for paralegal work, she served as a Continuing Education speaker from 2007 to 2008 for the Paralegal Division. In 2008, Sherrie began staffing Legal Aid Clinics organized by the Dallas Volunteer Attorney Program. These clinics make it possible for Dallas residents who are unable to afford legal assistance to receive assistance at little or no cost. Sherrie donates her time to once again making a difference in somebody else's life. Not a bad way to end a stressful day.

In addition to all of this, she managed to find time to become a Court Appointed Special Advocate with CASA of Dallas. These very special volunteers act as advocates for children who are thrust into the court system for any number of reasons. So far, Sherrie has committed nearly two years of her life to supporting and protecting the rights and hearts of society's most vulnerable members. "I want to laugh and cry at the same time," she admits when discussing her work with CASA. While with the children, Sherrie keeps a smile on her face, working to become their friend, someone they can trust and rely on. However, when she gets home, the emotions can be overwhelming. She recalls a young girl under six years old who had never received her vaccinations. In her role as advocate, Sherrie attended the child's visit to the clinic for the exam where it was determined the little girl needed twelve shots. Sherrie said, "My little girl did great, until the last two shots." We can only imagine.

It is very clear to me that this dedicated individual places great value on service work and will not hesitate to commit herself to helping others. As she states, "Volunteer work helps me keep my perspective and appreciate what I have. It's Nature's way. Those that have more, even if it is not much more, are supposed to help those that have less." Forty years of volunteer work dedicated to improving the lives of others show just how deep her love runs. Sherrie Lacy is a unique lady who is always ready to pledge her time and energy to improving the lives of others. She definitely has earned the 2009 Exceptional Pro Bono Service Award.

*Article Submitted by Connie Nims, District 2 Director. Connie was the 2008 winner of the Exceptional Pro Bono Award. She received her Certificate of Completion from Southeastern Career Institute's Paralegal Program in 2003. She is currently working for the Dallas County District Attorney's Office as a Civil Litigation Paralegal.*

# Scruples

## Update: Ethics Issues of E-Filing

by Ellen Lockwood, ACP, RP

**A**s more and more courts permit e-filing, the opportunity for more e-filing issues, ethical and otherwise, increases, as reflected in two recent federal court decisions.

In June 2009, the 5th Circuit addressed the issue of an incorrect and then incomplete filing of a notice of appeal in *Kinsley v. Lakeview Regional Medical Center*, 2009 U.S. App. Lexis 12077 (5th Cir. 2009). The district court had granted Lakeview's motion to dismiss on November 29, 2007. Pursuant to the rules, the notice of appeal was due on December 31, 2007. Kinsley filed a document on December 26<sup>th</sup> that was supposed to be a notice of appeal. However, the document turned out to be a Request for Oral Argument that Kinsley previously filed back in September. The court's docket entry for the December 26th document describes it as "deficient" as it was not a notice of appeal as Kinsley claimed in the transmittal. The docket sheet reflects another filing of the same Request for Oral Argument (also alleged in the transmittal to be a notice of appeal), followed by a notice of appeal that was deemed sufficient, both on January 2, 2008.

The court addressed whether Kinsley's filing on December 26<sup>th</sup> was "sufficient and timely" and if not, was the December 31st deadline in any way extended, mak-

ing her January 2nd filing of a sufficient notice of appeal timely. Although Kinsley offered several arguments in her defense, the court found that Kinsley's filing on December 26th was insufficient and not timely, and that she had not availed herself of any of the possible procedures to request an extension of the filing deadline for the notice of appeal.

The 8th Circuit also ruled on an e-filing issue in June 2009. In *American Boat Company, Inc. v. Unknown Sunken Barge*, 567 F.3d 348 (8th Cir. 2009), the court considered American Boat's motion to reopen the time to file an appeal. Counsel for American Boat claimed it had not received notice from the district court denying American Boat's motion to amend the judgment. The district court had electronically sent the order denying American Boat's motion to amend the judgment to all counsel of record but American Boat's counsel claimed it never received the notice.

After an evidentiary hearing, including testimony by computer experts and evidence that the notice had been received by the law firm's ISP server, the court ruled against American Boat. It was determined that the most likely explanation was that the attorney's secretary must have inadvertently deleted the email when she accessed the emails through the web rather than from her desk computer.

These recent rulings highlight the care that must be taken when filing electronically. If your office doesn't already have a procedure for attorney verification of documents prior to filing them electronically, it should. There are several methods but the best way is to print out the document to be filed, have the attorney sign it, and then that document goes in the file.

Further, those responsible for submitting documents via e-filing systems should not just rely on the document name to determine which documents to file. Documents should be opened and double-checked to ensure the correct document, and correct version, is being filed.

To minimize the chance of errors, it is advisable to have more than one person responsible for receiving notices from the court. In *American Boat*, the attorney did not have a computer so his secretary was the only person to review the attorney's and her emails. With no one else reviewing the emails received by the court, there was no backup for the secretary.

While e-filing is a wonderful convenience, procedures should be in place to minimize the potential for oversights and errors.



*Ellen Lockwood, ACP, RP, is the Chair of the Professional Ethics Committee of the Paralegal Division and a past President of the Division. She is a*

*frequent speaker on paralegal ethics and intellectual property and the lead author of the Division's Paralegal Ethics Handbook published by West Legalworks. You may follow her on Twitter @paralegaethics and her blog at <http://paralegal-ethics.blogspot.com>. She may be contacted at [ethics@txpd.org](mailto:ethics@txpd.org).*

## Paralegals Announce Plans to Visit Spain April 23—May 1, 2010

(Eight Days and Seven Nights  
visiting Seville, Granada,  
Cordoba, Cadiz, Jerez)

**T**he Paralegal Division (PD) has finalized its plans for the 2010 Annual International Trip. In 2010, the Paralegal Division is sponsoring a trip in conjunction with ACIS and traveling to Seville, Spain and surrounding areas. The detailed itinerary for the 2010 trip can be found on the PD website home page at [www.txpd.org](http://www.txpd.org). Friends and family are welcome to travel with the group.

Trip Fee is based on registration by **November 1, 2009** [Departing DFW—\$3,735; Amarillo—\$3,896; Houston—\$3,776; Midland—\$3,896; El Paso—\$3,896; Austin—\$3,836; San Antonio—\$3,836 (includes registration and departure fees)] Additional/Optional fees: Single room supplement: \$420; Ultimate Protection Plan: \$270; Comprehensive Protection Plan: \$180

Above fees based on 20 persons. Airfare and Hotel (double room) with daily breakfast is included in price as well as two lunches, two dinners, wine tasting, and all tours listed on the itinerary.

Payment Schedule: **Deadline for registration is November 1, 2009**; Initial deposit is \$300; second payment of \$500 is due December 2; third payment of \$500 is due on January 8, balance due on February 15, 2010.

Register at <http://www.travelandcompany.com/register/>, by selecting the **REGISTER** tab above the logo on the top left on the home page, choose **participants**, and sign in using: Group Leader ID: 91260 Group Leader Last Name: Hackler

## My Personal Experience in Greece

(PD Traveled to Greece in April 2009)

by Rhonda Brashears, ACP  
Amarillo

**O**n April 25, 2009 a Paralegal Division group traveled to Greece. We landed in Athens, Greece and immediately boarded a bus headed for our first touring destination, Nauplia, Greece. Nauplia is a beautiful little sea-side town. We had a brief rest and then

gathered for our first night dinner. We had a wonderful traditional Greek dinner of calamari, Greek salads, vegetables and swordfish.

On Monday, our Greek Tour Guide Liliana, led the group on a walking tour of Nauplia, including the Palamidi



Front row: Patti Giuliano, Rhonda Brashears, Linda Carrizales. Back row: Chris Relton, Bobby Tafolla



Fortress where several of the travelers (Chris, Bobby, Linda, Patti and Rhonda) climbed the 999 steps to the top. That afternoon we loaded the bus and went to Epidaurus where we saw the famous Theater of Epidaurus where ancient spectators watched the tragedies of Sophocles. We tested the acoustics and they were phenomenal.

On Tuesday, the group traveled to the Mycenae Fortress, the home of the famous Lion's Gate. This fortress was of the Mycenaean Period or the 16th Century B.C. They were a very rich culture that lived a luxurious life. There was evidence of royal living quarters, common living quarters, artisan quarters and various other evidences of early civilized living. We also visited the Royal "beehive" Tombs which were originally believed to be the tomb of Agamemnon, but it was later determined that the tombs predated his life. However, the gold mask found there is still referred to as the mask of Agamemnon. We then enjoyed a delicious lunch at King McNeelious where we enjoyed a menu of Moussaka and Souvlaki. After lunch we traveled to the historical city of Corinth, which is also the location of the Temple of Apollo. This city, at one time, had a population of 100,000 people and was the location of one of the first shopping malls. Most of the current ruins were of Roman builders from the 2nd Century B.C. Roman occupation. It was incredible to walk the marble roads built during this time period and to see where Paul the Apostle ministered to the ancient Corinthians. After this wonderful experience we boarded our bus and continued on the road back to Athens. That evening, after checking into the hotel, the group went to the Plaka area (quaint shopping area surrounding the Acropolis) and imagine our delight at seeing for the first time, the beautiful floodlit Acropolis.


On Wednesday, we gathered and went on our much anticipated tour of the Acropolis including the Parthenon, the Temple of Athena Nike and the Erechtheion. We then toured the National Archeological Museum. This was a day that fulfilled a life-long dream

and met all my expectations. Our group then had some free time to explore the wonderful city of Athens.


Thursday we traveled to Delphi where the ancient oracle gave words of wisdom. Delphi is the most sacred all of the ruins in Greece and is built on the side of a very large hill (Texans would refer to it as a mountain). The ruins here included walking the Sacred Way up to the ancient Sanctuary of Apollo. This site also included an amphitheater and a stadium.

The site is wonderfully preserved and was another great addition to an already fabulous trip. We returned to Athens for yet another delicious traditional Greek dinner with Zorba music as entertainment.

Our last day (Friday) was here before we knew it and was spent on a Saronic Gulf cruise of the Greek islands Hydra, Poros and Aegina. The islands were beautiful, each with their own special charm, and with plenty of shops for collecting Greek jewelry and souvenirs.



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# Paralegal Division Recognizes Debbie Guerra with 2009 Award of Excellence

**D**ebbie Guerra, current President-Elect and Vendor Liaison of the Paralegal Division of the State Bar of Texas, was awarded the 2009 Award of Excellence by the Board of Directors of the Paralegal Division at the 2009 Annual Meeting, held in June in Dallas. The 2008-2009 President of the Paralegal Division, Rhonda Brashears, spoke in glowing terms when she presented this award to Debbie, who was visibly moved and surprised.

The Award of Excellence, by definition, is an award conferred by the Board of Directors of the Paralegal Division to recognize an individual who has made a substantial contribution to the paralegal profession. The award is given for outstanding merit and is not be required to be conferred annually.

Debbie received this award because of her involvement with increasing the awareness of the Paralegal Division among the legal service community. Debbie's position as vendor liaison to the Paralegal Division has increased the membership of Sustaining members and their involvement with the Paralegal Division. Not only has she increased Sustaining members' involvement, she has increased the energy of the many volunteers of the Paralegal Division with her enthusiasm for each project in which she is involved. This enthusiasm has flowed to other volunteers and made the Division what it is today: a viable source for paralegals across the State of Texas. Many directors feel that Debbie's efforts have increased the awareness of the Division not only among the legal service community but in law firms across Texas. She has worked many hours on behalf of the Division because of her dedication to this profession and her efforts have



not gone unnoticed. She is truly a gem among the members and volunteers of the Paralegal Division.

Debbie has also served and been involved with the Dallas Area Paralegal Association (DAPA). She has lent her infectious enthusiasm and powerful energy to countless endeavors of DAPA and to the Paralegal Division, often simultaneously. Debbie was the President of DAPA, when it was known as the Dallas Association of Legal Assistants ("DALA"), and it was the only paralegal association in the area, with over 700 members. She served as DAPA's Executive Director from 2004 to 2007, and I am sure she extolled her excessive energy to DAPA as she has done for the Paralegal Division. In 2005, Debbie was awarded the DAPA 2005 Paralegal of the Year Award, and in 2007, the DAPA President's Award.

Debbie became the Paralegal Division's District 2 Director in 1996, a position

she held several years.


When she and her family moved to Flower Mound, she became District 12 Director and tirelessly served as such until she was elected by the Board of Directors to the office of President-Elect for the 2009-2010 term. Despite caring for her growing two boys, holding two jobs, volunteering in not only paralegal associations but also community projects and being involved in her sons' school, she somehow managed to be a frequent speaker to paralegals, paralegal student and professional groups. If that were not enough, she has been serving as the Division's Vendor Liaison for the past 4 years.

For these reasons, and countless others, Debbie received the Award of Excellence, "In recognition of outstanding contribution to the professional enhancement of paralegals in Texas."

# Emergency Economic Stabilization Act:

## Tax Breaks for Individuals

by Craig Hackler, Financial Advisor, Raymond James Financial Services Inc. Member FINRA/SIPC

 On October 3, 2008, Congress passed, and the President signed, the Emergency Economic Stabilization Act of 2008 (EESA), a “bailout bill” or “rescue plan” aimed at stabilizing the nation’s current economic problems. While much of the attention has been on the billions of dollars provided by EESA to help shore up America’s financial institutions, EESA also contains significant tax provisions that affect individuals. These tax provisions include an AMT patch, extensions of several expired or expiring tax breaks, energy incentives, and disaster tax relief.

### Another AMT patch

EESA includes yet another AMT patch. The AMT was created in 1969 as an alternative tax to ensure that the richest taxpayers could not avoid paying income taxes despite the use of deductions and “loopholes.” But, in part because key figures are not adjusted for inflation, it has ensnared more and more middle-class taxpayers each year.

To address this, Congress has passed a series of temporary fixes or “patches,” instead of permanently overhauling the AMT system. Without a patch for 2008, the number of taxpayers affected by the AMT would have increased from approximately 5 million in 2007 to 24.2 million. (Source: Steven Maguire, Cong. Research Serv. Report for Congress, Order Code RS22083, Alternative Minimum Taxpayers by State: 2005, 2006, and Projections for 2008--updated July 15, 2008)

This year’s patch extends (and slightly increases) AMT exemption amounts for 2008. (Generally, the larger the exemption, the less chance that you’ll actually have to pay the AMT.)

The expanded exemption amounts for

2008 are as follows:

- \$69,950 for married couples filing jointly and surviving spouses
- \$46,200 for unmarried individuals
- \$34,975 for married individuals filing separately

Be aware, however, that these exemptions continue to be phased out for higher income taxpayers. For married couples filing jointly, the phaseout starts when income exceeds \$150,000. For unmarried individuals, the phaseout threshold is \$112,500, and for married individuals filing separately, the threshold is \$75,000.

This year’s patch also continues to allow nonrefundable personal tax credits to offset AMT liability (as well as regular tax liability). Again, this reduces the chance of actually having to pay the tax.

EESA also modifies the way that the AMT refundable credit is calculated, generally making it easier for individuals to utilize any AMT credit that is carried over from prior years.

Additionally, EESA offers specific relief to individuals who were unable to pay AMT liability that resulted from the exercise of incentive stock options (ISOs) in prior years.

### Extended/modified tax breaks for individuals

Much of the tax relief for individual taxpayers contained in EESA comes in the form of tax “extenders”—provisions that renew for another year or two tax laws that had expired or were set to expire on January 1, 2009. These renewals include:

- **Deduction for sales tax:** The optional deduction for sales tax can be taken in lieu of state and local income taxes as an itemized deduction through 2009.

- **Deduction for educator expenses:** This above-the-line deduction of up to \$250 is for classroom expenses incurred by teachers, counselors, and principals in K-12 schools is extended through 2009.
- **Tip:** Expenses that exceed \$250 and non-classroom supplies may be deducted as an employment-related miscellaneous itemized deduction subject to the 2% floor.
- **Deduction for tuition and fees:** The tuition and fees deduction can be worth up to \$4,000, depending on adjusted gross income (AGI), and is extended through 2009.
- **Additional standard deduction for property tax:** This is a new deduction for 2008; individuals who don’t itemize can take an additional standard deduction for real property taxes paid during the year. This deduction provides an additional \$500 (or \$1,000 for joint filers) on top of the taxpayer’s regular standard deduction. This deduction is extended through 2009.
- **Tax-free distributions from IRAs for charitable purposes:** EESA permits taxpayers over age 70½ to make tax-free distributions of up to \$100,000 from IRAs for charitable purposes through 2009.
- **Child tax credit:** The income threshold for the additional child tax credit is lowered from \$12,050 (the scheduled threshold amount for 2008) to \$8,500 for 2008 only.

### Energy tax incentives

#### *Residential energy tax credits*

EESA extends the tax credit for residential energy-efficient property from 2009 to 2016. EESA removes the \$2,000 maximum

*(Continued on page 33)*

# 2009 Annual Meeting, Paralegal Division

**T**he Paralegal Division held its 2009 Annual Meeting in conjunction with the State Bar of Texas in Dallas at the Anatole Hotel on June 26, 2009. Lori Winter, CLA and Debbie Spencer were the 2009 Annual Meeting Co-chairs for the Division. Lori and Debbie planned both the CLE and the Annual Meeting luncheon that were scheduled Friday from 8 a.m. to 5 p.m. and did an excellent job.

The day began with a presentation by Tonya Parker entitled "Inclusion: The Older and Better-Looking Sister of Diversity." Ms. Parker is a partner with Gruber Hurst Johansen & Hail L.L.P. in Dallas and she has extensive litigation experience in both state and federal courts. Her presentation reviewed the United States Government's history of oppressing minorities and the sanctioning of unfair treatment by the law. She began her presentation with a history of Slavery and Segregation in the United States. She reminded attendees that slavery was legal for 211 years (1654 to 1865). In 1863 the Emancipation Proclamation was signed, but it wasn't until 1865, and the end of the Civil War, that Blacks finally had true freedom. During the presidency of Andrew Jackson there were Black Codes and Jim Crow was in effect from 1878 to 1964 until the Civil Rights Act was signed in to law. Ms. Parker went on to list cases that would lead to the creation of the Equal Pay Act in 1963, Affirmative Action in 1971, and the Policy on Sexual Harassment in 1986, just to mention a few. It was a very informative CLE and everyone came away with a renewed appreciation for the struggles that individuals must face when fighting for fair treatment under the law.

The next CLE was presented by Andrea Marshall, Esq., a legal consultant with Kroll OnTrack. Ms. Marshall's presentation was "The Professional Responsibility Considerations of Electronic Discovery." The thrust of her speech addressed diligence and candor in responding to a request. Ms. Marshall



Annual Meeting Luncheon Speaker Andrew B. Sommerman, Attorney, Sommerman & Quesada, L.L.P., Dallas, TX

explained the importance of understanding the details of requesting electronic evidence in order to avoid judicial sanctions, ethical violations, and malpractice claims. She explained the Federal Rules of Civil Procedure with regard to electronic evidence and case law where violations have been mentioned in the Judge's Opinion. Ms. Marshall stressed the importance of acting in good faith, even if a client's electronic records are destroyed in the normal course of business. Ms. Marshall also discussed the types of electronic evidence, the unexpected places where electronic evidence might be found (e.g., instant messaging), where and how the information is stored electronically, and who, within an organization, should be on board to assist in the collection of electronic evidence. Ms. Marshall showed that the process of requesting and providing electronic evidence is an enormous undertaking, that the whole area of electronic discovery is fraught and great care

must be taken in order to comply with federal or state rules relating to electronic evidence and to avoid being sanctioned by the court.

Following the morning CLE presentations, the Paralegal Division held its Annual Meeting Luncheon and Business Meeting that showcased the 2008-2009 leaders as well as the installation of the 2009-2010 Board of Directors. The luncheon was held in the Peacock Terrace room of the Anatole Hotel in Dallas; decorated around the theme of the keynote presentation, "As Parrots are to Eagles, So Are Lawyers to Paralegals." There were 121 attendees at the Annual Meeting. Rhonda Brashears, 2008-2009 President, presided over the Annual Meeting and served as the Master of Ceremonies.

During the meeting, the Division's Code of Ethics and Professional Responsibility, Rules of Order and the 2008-2009 Financial Statements were presented to the PD members in attendance.



In addition, the 2008-2009 reports of the President, Standing Committees, and the Ad Hoc Committees were distributed to all members present. Special Guests were recognized by President Brashears as well as the 2008-2009 Board of Directors. Further, as a surprise to President-Elect Stephanie Hawkes, President Brashears recognized the Nissan Corporation's in-house counsel and staff, who came to support Ms. Hawkes during her swearing in as the 2009-2010 President of the Paralegal Division. The 2008-2009 Committee Chairs were recognized during the meeting, but special recognition was given to Lori Winter, CLA and Debbie Spencer, as Co-Chairs of the 2009 Annual Meeting Committee.

Debbie Spencer introduced the Annual Meeting keynote speaker, Andrew B. Sommerman of the Dallas law firm of Sommerman & Quesada, L.L.P., whose presentation, "As Parrots are to Eagles, So Are Lawyers to Paralegals," which described how lawyers utilize paralegals. Mr. Sommerman is an AV rated attorney specializing in personal injury, medical malpractice, wrongful death, and product liability cases. He is Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization and a member of the State Bar College. He is currently an instructor at Southern

Methodist University and has been a professor at the South Texas College of Law and the University of Texas at Arlington. Mr. Sommerman received his J.D. in 1986 from South Texas College of Law. Mr. Sommerman's very humorous presentation described the duties of the paralegal and how attorneys can best utilize their paralegal's skills and abilities to improve their docket and overall practice. He offered examples of when to not be truthful to the attorney, especially when it comes to deadlines, i.e. always calendar the deadline early, rather than on the actual day. Mr. Sommerman offered his opinion on professionalism and how paralegals should maintain their professionalism as you never know who you will need to meet with or speak to on any given day. He also spent a great deal of time speaking on ethics and the importance for the paralegal to know where the line is drawn. After many jokes and cartoons, he concluded on a serious note regarding the importance of paralegals and how a really good paralegal can greatly improve a practice.

Following the keynote presentation, President Brashears recognized and introduced 2008-2009 award recipients as well as the outgoing and new leaders of the Paralegal Division. Each award presented by the Paralegal Division is voted on by

the Board of Directors of the Division. Awards were presented to: Sherrie Lacy as the recipient of the 2009 Exceptional Pro Bono Award; Debbie Guerra as the recipient of the 2009 Award of Excellence; and Outstanding Committee Chair Awards - Heidi Beginski, TBLS, Chair of the Publications Committee and Erica Anderson, ACP, Chair of the Membership Committee. Additional Special Awards were presented to Patti Giuliano as the TAPS 2008 Planning Committee Chair; Jennifer Barnes as Outstanding Volunteer; Harper Estes as the 2008-2009 State Bar of Texas President; Darla Fisher, PD Member and paralegal to Harper Estes; and Texas Senator Kirk Watson as sponsor of the Texas Paralegal Day Proclamation.

Door Prizes were distributed during the Annual Meeting to several of the attendees. In addition, the following vendors were recognized as supporters of the Paralegal Division 2009 Annual Meeting:

#### **Gold**

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Esquire Solutions, Dallas  
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#### **Silver**

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#### **Bronze**

Attorney Resource, Dallas  
Copy Solutions, LLC, Dallas  
Falcon Document Services, Dallas  
Metroplex Association of Corporate Paralegals (MACP), DFW  
North Texas Paralegal Association (NTPA), Dallas  
Robert Half Legal, Dallas  
Thomas Roney, LLC, Dallas  
Written Deposition Services, Dallas

Following the Annual Meeting luncheon, there was a two hour CLE presentation by Professor Wayne Schiess on "Legal Writing." Professor Schiess is a professor at the University of Texas School of Law and he had some great



Erica Anderson (left) accepting Committee Chair award from Rhonda Brashears (right)



Stephanie Hawkes (incoming President) accepting gavel from Rhonda Brashears (outgoing President)

ideas about keeping our writing clear and timely. To begin with, Professor Schiess gave the attendees a list of books we should have or at least have access to. Below is a sampling:

*The Red Book: A Manual of Legal Style* by Bryan Garner

*Texas Law Review Manual on Usage and Style*, 11th Ed.

*The Elements of Style* by Strunk and White

*Lawyers Guide to Writing Well* by Goldstein and Lieberman

*Writing to Win* by Steven Starck

*Writing for the Legal Audience* by Wayne Schiess

He then suggested how we could become better writers by 1) studying writing, 2) practicing writing, and 3) accepting critique. He asked the group how many words are in the average sentence. Apparently, a good sentence is about 20 words in length. He warned against the use of the passive voice which is created by using forms of the verb “be.” He pointed out our tendency to make lists in our motions that revolve around dates instead of creating a narrative that highlights events. He reminded the audience to read the finished product for words

that are misspelled but don’t show up in spell check like “field” in the place of “filed.” All legal writing should be front loaded. Most judges will admit they rarely read the whole motion, so put the relevant points at the beginning. Professor Schiess addressed a common issue that most paralegals have with legal writing. Namely, why do we still write in such an antiquated manner? Using “archaisms, latinisms, and legalisms” is unnecessary, but since Professor Schiess does not run an employment service, if your attorney

insists that the paragraph begins with “Comes Now,” just humor him.

The last CLE presentation of the day, “Dallas DNA,” was presented by Michelle Moore, Dallas County Assistant Public Defender, DNA Attorney. Ms. Moore received her J.D. in 1990 from the University of Arkansas at Fayetteville. With the new DNA testing Ms. Moore works to overturn convictions for men and women who are wrongfully imprisoned for serious crimes in the State of Texas. The Legislature passed a law in 2001 allowing convicts to apply for DNA testing. Since then, Dallas County has had 20 exonerations – more than any county in the nation. Ms. Moore recently had been on the morning news program, The View, and featured on a Discovery Channel mini-series, titled Dallas DNA. Ms. Moore discussed how the DNA testing program has cleared the names of inmates from crimes that the tests prove they did not commit. She also discussed the Innocence Project and how paralegals can dedicate their time to help with this program. Along with Ms. Moore, the attendees had the privilege of listening to recent exoneree Johnnie Lindsey. He joined Ms. Moore in describing how the process works and more importantly how it affects the inmates’ lives. His story was very moving and also informative as he spoke of what life is like for a wrongly accused person.



Left to right: Christina Murray, Debbie Ortiz, Mary Rios, Alan Hunn, Stephanie Hawkes, Scott Peters, Marta Lujan, Bill Hays

## President Stephanie Hawkes, RP, CIPP



In 2009–2010, Stephanie is honored to serve as President of the Paralegal Division. Stephanie is the Manager of Privacy and Information Security at

Nissan Motor Acceptance Corporation, in a position in which she reports to General Counsel.

Stephanie is a graduate of the University of Texas at Austin and the Lawyers Assistant Program at Southwest Texas State University. In 1999, she obtained her Registered Paralegal certification from the National Federation of Paralegal Associations. In 2008, Stephanie obtained her Certified Information Privacy Professional designation from the International Association of Privacy Professionals.

Throughout her career, Stephanie has been active in professional development of paralegals. She has served in various positions on several planning committees for the Texas Advanced Paralegal Seminar and Co-Chaired the Annual Meeting Committee in 2005. She previously served on the Board of the Dallas Area Paralegal Association. In 2000, she was awarded the “Volunteer of the Year” award and in 2001 was designated “Paralegal of the Year” by DAPA. Stephanie is a Past President of the Metroplex Association of Corporate Paralegals and most recently was the President Elect, District 2 Director and Treasurer of the Paralegal Division. Away from the office, Stephanie is a mentor in the Communities in School of North Texas program.



## President Elect Debbie Guerra



With more than 20 years of corporate paralegal experience, 13 of those spent with the Trammell Crow Company, Debbie Guerra is currently in-house paralegal for Natural Gas

Partners, a private equity firm headquartered in Las Colinas. In addition to her paralegal training, she has five years legal recruiting experience, including three years as the Vice President of Paralegals Plus, Inc.

Debbie is a Past President of the Dallas Area Paralegal Association (DAPA), where she also served as Executive Director (2004–2008), NFPA Primary Representative (2008) and Scholarship Chair (2008–present). She has served on the State Bar of Texas, Paralegal Division (PD) Board of Directors as District 2 Director (1996–1997), District 12 Director (2005–2008) and Parliamentarian (2008). She currently serves the PD as Vendor Liaison as well as Vendor Chair on the

Texas Advanced Paralegal Seminar (TAPS) Planning Committee. Debbie was selected as the DAPA Paralegal of the Year in 2005, DAPA Volunteer of the Year in 2005 and received the DAPA President’s Award in 2007. She currently serves on the Educational Advisory Boards of both Southeastern Career Institute and Everest College – Dallas and is a member in good standing of DAPA, NFPA and the PD.

Debbie and her husband Freddie live in Flower Mound with their sons, Spencer and Reed.

## Parliamentarian Clara Buckland, CP



Clara Buckland is serving as the 2009–2010 District 16 Director (El Paso) of the Paralegal Division and is currently serving its Executive Committee as

Parliamentarian. She served as Secretary of the Paralegal Division from 2007–2009. She has served as District 16 Director since 2006 and is serving the last year of



her second term. Clara has been a member of the Paralegal Division since 1993.

Clara received her Certified Paralegal by the National Association of Legal Assistants/Paralegals in 2003 and is currently working for the El Paso law firm of Kemp Smith LLP. She has worked in the firm's specialty area of Labor and Employment Law for nearly 15 years. Her supervising attorney and mentor is Michael D. McQueen, Managing Partner.

Clara received her A.A.S. in Paralegal Studies from the El Paso Community College and has served on the college's Advisory Committee for the Paralegal Program. Clara is a member of the El Paso Paralegal Association and has served on that organization's board in various capacities, including President in 2003, the same year she received the Paralegal of the Year Award.

Clara has been very vocal and involved in the El Paso Paralegal Association with the goal of helping and motivating her fellow paralegals toward continued self-imposed education and for the imposition of higher standards and regulation on the paralegal profession as a whole.

Clara enjoys many interests, including reading and research on the Tudor court of England, and enjoys working on her new found hobby, mosaic. Clara has an identical twin, Claudia. Clara is married to Bucky (Mark) and they have two daughters, Jazmine and Olivia. In addition, they have been blessed with three beautiful grandchildren: almost five year old Jason; Maddie, age three; and one year old Jayden.

## Treasurer Cheryl Bryan, CP

For the 2009–2010 term, Cheryl Bryan is serving the Paralegal Division in her second term as its Treasurer and, also, as Director of District 10. Cheryl is a paralegal with the law firm of Orgain Bell & Tucker, LLP in Beaumont, Texas.

She attended Northern Illinois University in DeKalb, Illinois for two



years. She has been employed with OB&T for just over 27 years. She began working as a paralegal in the late 1980's. In 1992, she took and passed the

CLA exam sponsored by NALA. In 1997, she took and passed the board certification exam in personal injury trial law sponsored by the Texas Board of Legal Specialization.

Cheryl has been a member of the PD since 1993. She actively pursued CLE through the seminars sponsored annually by the Division, and in 1998 or 1999, she met Nancy McLaughlin at a PD seminar. Nancy McLaughlin was a great supporter of the profession and the Division, and it was after her untimely death that Cheryl considered becoming more active in the PD. Cheryl began by volunteering at TAPS, and now is Director of District 10 as well as the PD Treasurer.

Cheryl is also actively involved in her local association, the Southeast Texas Association of Paralegals. Over the last several years, she has served on event planning committees (including the TAPA 2010 Planning Committee), and has been elected to serve her second term as SETAP's NALA Liaison for 2009–2010. Cheryl has been married to her husband, George, for almost 17 years. They have no children but do have two wonderful Labs, Jake and Samantha, one adopted Lab, Blackie (who is actually their grandpuppy), and three saltwater aquariums.

## Secretary Michele Rayburn, PLS, CP

Michele E. Rayburn received her Associates in Applied Science from Tarrant County College, graduating summa cum laude. She is a member of Phi Theta Kappa. She received certification as a Certified Professional Legal



Secretary in October 1986 from the National Association of Legal Secretaries. Michele received certification as

a Certified Paralegal from the National Association of Legal Assistants/Paralegals in May 1991 and has been re-certified in 1995, 2000, and 2005. In June 1995, she became a Board Certified Paralegal in Personal Injury Trial Law by the Texas Board of Legal Specialization, being among the first paralegals in Texas to attain this certification. She was re-certified in 2000 and 2005. She has authored the following articles: "Responding to Interrogatories and Requests for Production of Documents," "Trial Preparation," and "Assistance at Trial."

Michele is the outgoing 2008–2009 Parliamentarian and the incoming 2009–2010 Secretary of the Paralegal Division of the State Bar of Texas Paralegal Division, and is a past Paralegal Division Membership Chair as well as a District 3 Public Relations and Continuing Legal Education Sub-chair. She has been the District 3 Director for the Paralegal Division of the State Bar of Texas since 2007 and was recently re-elected to serve as District 3 Director for the 2009–2011 term. Michele has been a member of the Paralegal Division since 1994. Additionally, she is First Vice President-Programs for the Fort Worth Paralegal Association and Paralegal Division of the State Bar of Texas Liaison to that Association.

Michele began her career with Wynn, Brown, Mack, Renfro & Thompson in 1974, moving to Shannon, Gracey, Ratliff & Miller in 1979. While there, she began working for Michael Wallach in 1985 and left Shannon, Gracey with Mr. Wallach when he formed Wallach, Jones & Moore, P.C., in 1991, now known as Wallach & Andrews, P.C. She is also an Associate Member of the Tarrant County Bar Association.

## Emergency Economic Stabilization Act

(Continued from page 27)

limit on solar electric property. Further, EESA adds new types of equipment that qualify for the credit: (1) wind energy equipment, which qualifies for a tax credit of up to 30% of the cost, capped at \$4,000, and (2) geothermal heat pumps, which qualify for a credit of up to 30% of the cost, capped at \$2,000.

Additionally, the residential energy conservation property credit, which provides a credit of up to \$500 for purchasing energy-saving products such as windows, insulation, and HVAC systems, is extended, but only for property placed in service during 2009. EESA also adds two new types of improvements that qualify for the credit: (1) qualifying biomass fuel stoves, and (2) asphalt roofs with cooling granules. Note, however, that while the credit is worth up to \$500 for various improvements, the credit is limited to \$200 for windows, \$300 for biomass fuel stoves, and \$150 for

qualifying furnaces or hot water boilers.

### *Tax credit for electric vehicles*

EESA creates a new tax credit of \$2,500 to \$7,500 for plug-in electric vehicles. The credit will start to phase out for each manufacturer after 250,000 qualifying electric vehicles are sold. Vehicles that qualify will need to be certified under the Clean Air Act and meet low-emission standards. Higher tax credits are also available for electric vehicles with gross vehicle weight ratings of more than 10,000 pounds.

### *Tax-free fringe benefits for bicyclists*

EESA provides a new tax break for people who commute by bicycle. Employers can provide a tax-free fringe benefit of up to \$20 per month to cover "reasonable expenses incurred by the employee" for the purchase, improvement, repair, and storage of a bicycle that is regularly used to commute between the employee's home and office. This bicycle fringe benefit will begin in 2009.

## Disaster relief

EESA provides temporary tax relief to victims of the storms, tornadoes, and flooding that occurred in the Midwest in 2008, and to victims of Hurricane Ike in Texas. Additionally, EESA generally authorizes relief for all locations declared disaster areas by the President in tax years beginning after December 31, 2007, and before January 1, 2010.

For more information, consult your financial or tax professional.

*Craig Hackler holds the Series 7 and Series 63 Securities licenses, as well as the Group I Insurance license (life, health, annuities). Through Raymond James Financial Services (151 Loop 64, Suite A, Dripping Springs TX 78620), he offers complete financial planning and investment products tailored to the individual needs of his clients. He will gladly answer your questions. Call him at 512.894.0574 or 800.650.9517.*

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## State Bar of Texas, Paralegal Division —Sustaining Membership Roster

### Attorney Resource

[www.attorneyresource.com](http://www.attorneyresource.com)

### CaseFileXpress, LP

[www.cfxpress.com](http://www.cfxpress.com)

### CCI, Ltd.

[www.recordsdiscovery.com](http://www.recordsdiscovery.com)

### Center for Advanced Legal Studies

[www.paralegalpeople.com](http://www.paralegalpeople.com)

### Central Texas Litigation Support Services, Inc.

[www.centxlitigation.com](http://www.centxlitigation.com)

### Copy Solutions

[www.copy-solutions.net](http://www.copy-solutions.net)

### CyberEvidence, Inc.

[www.cyberevidence.com](http://www.cyberevidence.com)

### Dynamic Legal Solutions

[www.dltx.com](http://www.dltx.com)

### Easy Serve, LLC

[www.easy-serve.com](http://www.easy-serve.com)

### El Centro College Paralegal Studies Program

[www.dcccd.edu](http://www.dcccd.edu)

### Elite Document Technology

[www.elitedoctechnology.com](http://www.elitedoctechnology.com)

### Gulf Stream Legal Group

[www.gulfstreamlegal.com](http://www.gulfstreamlegal.com)

### Hollerbach & Associates, Inc.

[www.hollerbach.com](http://www.hollerbach.com)

### Innovative Legal Solutions

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### Keais Records Service

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[www.lawvendors.com](http://www.lawvendors.com)

### Legal Concierge, Inc.

[www.legalci.com](http://www.legalci.com)

### Legal Solutions

[www.legalsolutionscourtreporting.com](http://www.legalsolutionscourtreporting.com)

### Litigation Solution, Inc.

[www.lsilegal.com](http://www.lsilegal.com)

### Litigation Technology Consulting, Inc.

[www.ltci-austin.com](http://www.ltci-austin.com)

### Lone Star College

[www.lonestar.edu](http://www.lonestar.edu)

### Navarro College

[www.navarrocollege.edu](http://www.navarrocollege.edu)

### Nell McCallum & Associates, Inc.

[www.nellmccallum.com](http://www.nellmccallum.com)

### Newhouse Noblin Highley Practice Support

[www.newlinelegal.com](http://www.newlinelegal.com)

### Open Door Solutions

[www.opendoorsolutions.com](http://www.opendoorsolutions.com)

### Registered Agent Solutions, inc.

[www.rasi.com](http://www.rasi.com)

### South Texas College

[www.southtexascollege.edu](http://www.southtexascollege.edu)

### Special Counsel

[www.specialcounsel.com](http://www.specialcounsel.com)

### Standard Renewable Energy, LP

[www.sre3.com](http://www.sre3.com)

### Texas Legal Copies, Inc.

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