

THE Enterprise

UTAH'S BUSINESS JOURNAL

www.slenterprise.com

Aug. 27-Sept. 2, 2012

Volume 42, Number 4

\$1.50

THIS WEEK

Study: Salt Lake area apartment market is very strong
See page 3.

• **Industry Briefs** •
Begin on page 6.



See page 10.

• **Calendar** •
See page 16.

Codale Electric Supply sold to Philadelphia's Sonepar USA



Codale Electric, founded in 1975, occupies this 210,000 square foot headquarters facility in West Valley City.

Codale Electric Supply Inc., a West Valley City-based wholesale supplier of electrical parts with 12 locations in three states, has signed an agreement to be sold to Philadelphia-based Sonepar USA, a subsidiary of privately held Sonepar Group. Codale is ranked as the largest independent electrical distributor in the markets it serves.

The Utah firm has founded in 1975 by Dale Holt as a single 5,000 square foot location and five employees.

"We are pleased to welcome Dale and his management team at Codale Electric Supply to the Sonepar USA group. This strategic acquisition will further strengthen our footprint and

offering throughout U.S. market," Dave Gabriel, president of Sonepar North America and CEO of Sonepar USA, said in a written statement.

Neither Holt nor representatives from Sonepar could be reached for further comment.

Codale maintains a 210,000 square foot headquarters at 5225 W. 2400 S. in addition to facilities in Orem, Las Vegas, Price, Cedar City, Elko, Logan, Ogden, Rock Springs, St. George, Blanding and Casper. Sonepar has no operations in those states; it does have a presence in Colorado, Arizona and New Mexico, in addition to the West Coast.

see CODALE page 2

Seventy-nine Utah firms make 2012 Inc. 5000 list

Thirteen Utah companies made the 2012 *Inc.* 500 list, released last week. The list is an annual compilation of the nation's fastest-growing private companies.

Inc. magazine compiles the list by asking companies for information and then checking their revenues against tax records. Companies must have been founded by March 2008 and generated \$100,000 in revenue that year, and generated at least \$2 million in revenue last year.

Campus Book Rentals, Ogden, was the highest ranking Utah firm on the list, coming in at No. 17 with a 8,175 percent three-year growth rate. The firm has annual revenues of \$23 million, 118 employees and is in the education industry, according to the list.

The rest of the field:

- Complete Merchant Solutions, Provo, No. 19. Growth rate: 7,531 percent. Revenues: \$17.9 million. Employees: 30. Industry: financial services.

- Edge Homes, Orem, No. 53. Growth rate: 4,491 percent. Revenues: \$37.2 million. Employees: 15. Industry: construction.

- MediaForge, Midvale, No. 55. Growth rate: 4,337 percent. Revenues: \$5.5 million. Employees: 31. Industry: advertising and marketing.

- VRx, Murray, No. 70. Growth rate: 3,732 percent. Revenues, \$70.7 million. Employees: 43. Industry: health.

- Bohme, Sandy, No. 83. Growth rate: 3,340 percent. Revenues \$8.6 million. Employees: 130. Industry: retail.

see INC. page 2

Upcoming DABC audit 'will not be a good one,' former director says

By Brice Wallace
The Enterprise

The Utah Department of Alcoholic Beverage Control (DABC) has been the subject of critical legislative audits in the past, and one to be released Sept. 11 "will not be a good one," according to the department's former interim director.

Speaking at a Salt Lake Rotary luncheon last week, Francine Giani said she had read the audit report. She gave no details, but said it will focus on inventory issues.

"That audit will not be a good one," she said. "That audit will be on missing inventory. I guess we'll see what happens."

The DABC operates a state-wide network of state stores and package agencies that sell alcoholic beverages except beer containing less than 4 percent alcohol

by volume, which is sold in grocery and convenience stores. The package agencies sell state-owned liquor and make a commission on those sales.

"The audit that comes out in September will be problematic," Giani said. "We will have to figure out a way to have better controls on the alcohol. The crazy thing about DABC is that it is unlike any other agency because it has this retail arm of liquor sales. ... I think that this is kind of the way it will continue at this time. So, with that being the case, we have to figure out a way to control what's coming in and what's going out."

There certainly is a lot coming and going. The department had sales of \$295 million and gross profit of \$136 million in fiscal year 2011. And those figures

see DABC page 2

Legislators want Congress to address 'remote' retail taxes



A legislative committee has adopted a "fallback" resolution if the lame-duck Congress fails to act.

By Brice Wallace
The Enterprise

A state legislative committee wants Congress to address the matter of "remote" retailers collecting and remitting sales and use taxes and has adopted a resolution urging congressional action if the current lame-duck Congress fails to act.

The Revenue and Taxation Interim Committee, at its August meeting, adopted what was described as a "fallback" resolution that could be advanced in the 2013 general session if Congress

does nothing in the meantime. Congress currently has three bills addressing the matter.

The resolution urges Congress to require all retailers whose sales to consumers in the state exceed a minimum threshold — an amount not spelled out in the resolution — to collect applicable sales taxes on sales in the state. It notes that there are more than 9,600 state and local taxing jurisdictions in the United States, "each with unique and changing definitions, rules, and holi-

see TAXES page 2



TAXES

from page 1

days” and “the sales tax is, from a remote seller’s perspective, one of the most complex and costly taxes imposed by state and local governments.”

It also says that less than half of the states have worked to make it simpler or less costly for retailers that collect and remit sales taxes in multiple states, and the largest states have not participated in simplification or cost reduction.

Specifically, the resolution urges Congress to enact legislation to authorize states “to establish true fairness in state tax collection for both retailers having physical presence in a state and retailers who are remote sellers.”

Rep. Wayne Harper, R-Taylorsville, said the resolution addresses “the issue of the tax

inequity and the burdens that are being placed on business. We want to consolidate it down” so that instead of dealing with 9,600 taxing jurisdictions, “you’re dealing with one entity in each state,” with a single audit and a single return to be filed each month. “That’s where we’re heading,” he said.

Various proposals for Internet tax collection were considered this summer at meetings of the American Legislative Exchange Council (ALEC) and the National Conference of State Legislators (NCSL). Harper said the ALEC members could not agree on a single proposal. The NCSL adopted a resolution based on principles spelled out in an earlier Utah proposal.

Harper said a lack of a remote tax collection system — mostly through Internet sales but also on some catalog and mail-order purchases — costs Utah between \$120 million and \$160 million

annually.

“The interesting thing is that, as I have discussions with people, they feel like when they’re online, they know that they’re avoiding a tax which is due and payable, but quite a number feel like when it says ‘shipping and handling’ and anything like that, the tax is being applied at that time [so they] don’t pay any attention to it,” Harper said. “And thus when it comes time to remit your income tax and there’s the line on the fees tax on the income tax return, most people ignore it. So what we’re asking for is nothing more than a collection tool for a tax that is already due.”

Rep. Steve Eliason, R-Sandy, stressed that the matter does not involve “taxing Internet sales.”

“That’s the current code,” he said. “It’s simply a collections issue. In the state of Utah right now, less than, I believe, 1 percent of state tax returns include

any use tax. So I’m positive that a large percentage of our population purchases products online or through a catalog where they’re not paying the taxes, so when you send in a tax return and sign that ‘under penalties of perjury this is accurate,’ it’s creating a lot of problems with taxpayers because they simply don’t know how much they owe or that they even owe it. So this simply will make it easier for taxpayers to comply with current law and it’s not raising taxes at all but it does raise over \$100 million [for the state].”

Utah officials have been working to address the issue of Internet taxation fairness for more than a decade. In this year’s general session, the legislature adopted HJR14, which urged Congress to pass legislation “for the fair and constitutional collection of state sales tax by both in-state and remote sellers.”

INC.

from page 1

- Central Logic, South Jordan, No. 130. Growth rate: 2,449 percent. Revenues: \$6.5 million. Employees: 37. Industry: health.

- Four Foods Group Holdings, Highland, No. 143. Growth rate: 2,283 percent. Revenues: \$12.5 million. Employees: 410. Industry: food and beverage.

- Real Property Management, Layton, No. 228. Growth rate:

1,591 percent. Revenues: \$28.3 million. Employees: 55. Industry: real estate.

- Citadel Insurance Services, American Fork, No. 282. Growth rate: 1,292 percent. Revenues: \$2.3 million. Employees: 18. Industry: insurance.

- Public Engines, Draper, No. 297. Growth rate: 1,247 percent. Revenues: \$2.7 million. Employees: 25. Industry: security.

- MyNaturalMarket, Draper, No. 481. Growth rate: 801

percent. Revenues: \$6.8 million. Employees: 14. Industry: retail.

- SEO.com, Bluffdale, No. 491. Growth rate: 774 percent. Revenues: \$9.1 million. Employees: 76. Industry: advertising and marketing.

The **Inc.** 500 list is part of a larger compendium, the **Inc.** 5000. A total of 79 Utah firms made the Inc. 5000. The entire list is available online at <http://www.inc.com/inc5000/list/2012> and can be sorted by state.

TAB Bank, Ogden taps Steve Sala as new president

Ogden-based TAB Bank has appointed Steve Sala as president. Sala has been a member of TAB’s board of directors for approximately 18 months.

Sala’s background encompasses all aspects of finance, including time spent as CFO and board director for Skaggs Companies Inc., president of S Four Enterprises Inc., and CFO for Santa Fe Partners. His experience also includes a long bank-

ing career with the likes of JP Morgan Chase, Wells Fargo, and First Interstate Bank. During his tenure at First Interstate Bank, he oversaw numerous divisions in Utah and California.

He founded the consulting firm SFE Advisors, where he has managed the problem assets and commercial lending groups of multiple institutions whose assets exceed \$6 billion. Most recently, he has served as the CLO and CEO

for an Oregon and an Arizona financial institution responsible for the workout and restructure of their commercial loan portfolios.

TAB provides custom working capital solutions to commercial businesses in many industries.

SUBSCRIBE TODAY!
(801) 533-0556

CODALE

from page 1

Sonepar USA is comprised of a group of locally managed electrical and industrial distributors. It is part of Sonepar, a global leader in business-to-business distribution of electrical products and related solutions. Sonepar is an independent French family-owned company founded in 1969 that employs 33,000 associates at 160 entities in 35 countries. Revenues totaled 14.7 billion euro last year.

According to *Electrical Marketing*, Codale has sales of more than \$220 million annually. Codale’s website indicates the firm had sales of more than \$236 million in 2008.

Codale was featured on the cover of the July 2012 issue of *Electrical Wholesaling*. The full article can be read at http://ewweb.com/companyprofiles/electric_extreme_branching/.

DABC

from page 1

could rise. At a special session in June, the legislature passed a bill to issue 90 new liquor licenses — 50 full-service and 40 limited-service (only wine and beer). By July, 29 were issued. “They do go kind of quickly,” Giani said.

Several restaurant chains have indicated a desire to enter the Utah market but have been tentative because of their inability to obtain a license.

“The reason why the legislature added additional licenses is because, from an economic development standpoint, there are a lot of restaurants that want to come in,” said Giani, who is executive director of the Utah Department of Commerce. “There are some studies that say that restaurants are not what causes the drunk driving — it’s the club licenses, so there are no [available] club licenses. I’m not going to judge that. I don’t really know. We’ll just institute the policies that the legislature has put before us and make sure we follow them closely.”

Giani also noted that all Utahns — drinkers or not — benefit from DABC’s operations because they fund school lunch programs, result in less crime and impaired driving when its standards are enforced, and its “Parents Empowered” is nationally recognized as a top youth alcohol education program.

“It has been eye-opening to me to discover how much I can serve the public through an agency that sells alcohol,” she said.

Giani served as interim director of the department, which has 593 employees, for about a year. Earlier this month, Gov. Gary Herbert nominated her to serve on the Alcoholic Beverage Control Commission. Her appointment has yet to be confirmed by the state Senate. Herbert appointed Salvador Petilos to take over as department director.

frame it

“You Name It ~ We Frame It”

Whether you know exactly what you are looking for or don’t have any idea at all, turn to the experts at Frame-It for your picture framing needs. Our helpful staff will assist you in designing the ideal treatment for your cherished artwork with the perfect complement to your home, office, gallery or institution while complementing your personality.

3149 South State Street
Salt Lake City, UT 84115
801-485-7225

frameitutah.com

[facebook.com/Frameitutah](https://www.facebook.com/Frameitutah) 



There was this very unique photo of a rescue that one of our flight team members had enlarged, it was such a striking photo that we decided to frame it and hang it in our reception area.

Because of the size, we used an old frame that we didn’t know what to do with — didn’t even know if it would work — Patty said she would take care of it. Turned out to be one of those things that stops you in your tracks when you see it!

I’ve been fortunate to work with the great people at Frame-it for more than twenty years, not only is their products top rate but their creativity and imagination is truly remarkable — they know what I want before I do — you just can’t beat that, thank you.

K.D Simpson,
LifeFlight, Utah

Quality hand crafted picture frames made one at a time

SUGAR HOUSE OFFICE SPACE

2257 South 1100 East
Salt Lake City, UT 84106

Sugar House \$16 / RSF / Year
500-12,000 Sq. Ft. Available

Call 801-486-8157 or email
gary@garyayork.com for
property information and
features.

Secure prime office space
now as Sugar House looks
forward to light rail and
major developments in the
near future.

Study: Salt Lake City area apartment market very strong

The apartment market in the greater Salt Lake City area is very strong, with stability and growth continuing into next year, according to an annual apartment market report by Commerce Real Estate Solutions, Salt Lake City.

“Clearly, this is a very good time to be in the apartment market if you are a landlord,” said Kip Paul, executive director, investment sales for Cushman & Wakefield/Commerce. “Investments have gone up in value, vacancy rates have gone down and rental rates have

increased by 8 percent over the past year, which makes this a very attractive investment market. We have also seen that developers are being aggressive and anxious to build new projects, which keeps this market fresh with new buildings for tenants and helps bring the supply and demand in balance. Currently, the demand for rental units exceeds the supply.”

The highlights of this year’s study on Salt Lake County include:

- A 3.8 percent vacancy rate, which is down from 5.2 percent

last year.

- An 8 percent growth in rental rates over the past 12 months.

- A 1.4 percent increase in supply of newly constructed units.

- Projects offering concessions down from 60 percent to 25 percent year over year.

The forecast for the upcoming year includes:

- Stabilized vacancy at 4 percent valley-wide.

- Rental rate growth of 5 percent annually.

“The strong state of the market makes this a very good time

to sell for those looking to reposition their investment properties,” Paul added. “While developers are moving forward, there is currently a lack of product on the market in terms of apartment buildings available to purchase; we are seeing a large number of buyers who want to get into this strong market.”

The full Apartment Market Report for 2012 can be accessed at http://www.comre.com/reports/2012Reports/Utah/Rental_Market_Report_2012.pdf.

Idaho car wash to enter Utah market with location in Midvale



The first Rocket Express was opened in Twin Falls, Idaho.

Rocket Express Car Wash, Twin Falls, Idaho, is preparing to enter the Utah market with a location at 150 W. 7200 S. that is expected to open after the first of the year. A groundbreaking will take place Aug. 29.

Rocket Express founders Joe and Janet Russell said the firm’s founding “was based in the belief that car wash customers would enjoy the benefits of washing their vehicle more frequently if the necessary time commitment at the wash was substantially reduced. The response has thankfully been overwhelming.”

The prototype Rocket Express Car Wash is breaking national wash volume records. “Our custom made equipment and proprietary, cutting edge technology allows us to consistently deliver on our motto ‘Clean, Shiny, and Dry In 4 Minutes,’” said Joe Russell.

“We offer a robust under-carriage wash, during which salt is removed and rust protectant is applied. Rocket Express also offers use of free outstanding vacuums with each wash,” said Janet Russell.

Ascent Construction is general contractor on the Midvale project, which will include what the Russells said will be longest and fastest car wash conveyor in Utah, at 221 feet.

Joe Russell said the owners at “looking at a couple of locations, at signalized intersections, for the second Utah Rocket Express.”

Energy, water consulting firm opens office in Midvale

Apex Companies LLC, a Rockville, Md.-based national energy, water resources and environmental consulting and engineering firm, has opened a Utah office at 7029 S. 400 W., Midvale.

The branch will serve as a field office to support expanding environmental and engineering work, particularly in the water and stormwater service industries. It employs a variety of staff, including field supervisors, technicians and project managers.

“Our continued expansion can be greatly attributed to impressive client retention, as well as the ability to identify and secure new business opportunities across the country,” said Roger Nordlinger, senior vice president-business development of Apex. “We’re eager to move into new

regions.”

Apex is focused on minimizing environmental liabilities and hurdles to maximize client’s business opportunities. Recently named a Top 500 Design Firm and Top 200 Environmental Firm by *Engineering News-Record* magazine, Apex acquired TITAN Engineering Inc., Dallas, and Ash Creek Associates Inc., Portland, Ore., in 2011, privately held environmental and engineering services firms.

The company was founded in 1988 and employs more than 450 professionals, including geologists, hydrogeologists, engineers, air quality experts, environmental scientists, industrial hygienists, safety specialists and field technicians, across a network of more than 35 offices throughout the United States.

THE ENTERPRISE
[USPS 891-300]
Published weekly by Enterprise
Newspaper Group Inc.
825 N. 300 W., Suite C309,
Salt Lake City, UT 84103
Telephone: (801) 533-0556
Fax: (801) 533-0684
Website: www.slenterprise.com.
For advertising inquiries,
e-mail david@slenterprise.com. To contact the
newsroom, e-mail barbara@slenterprise.com.
Subscriptions are \$55 per year for online only, \$65
per year for print only and \$75 per year for both the
print and online versions,
or \$1.50 per copy. Opinions expressed by
columnists are not necessarily the
opinion or policy of The Enterprise
Copyright 2012 Enterprise Newspaper Group Inc.
All rights reserved
Periodicals postage paid at
Salt Lake City, UT 84199.
POSTMASTER: Send address
corrections to P.O. Box 11778,
Downtown Station
Salt Lake City, UT 84147

VALET FOR LESS AIRPORT PARKING

Convenience at a better VALUE than Airport Parking!

**Get your
auto serviced
while you travel**

- Mini & Full Detail
(Inside & Out)
- Lube, Oil & Filter
- Glass Repair or
Replacement
- Paintless Dent Repair
- Dry Cleaning
- Tire Service
- Vehicle Storage
- Free Car Wash



50% OFF

Any level of Valet parking
3 levels (Open, Canopy or Covered).
Not valid with any other offer
Clip & present for discount Expires 12/31/12

50 S. Redwood Rd.
801-355-7275
www.diamondslc.com





BANK of UTAH

Equal Housing Lender | Member FDIC

BUSINESS LENDING IS OUR BUSINESS

- SBA Loans •
- 504 •
- Commercial Mortgage •
- LOC •

1000 W. 800 N.
Orem, UT
84111
(801) 623-5145

Bob Bunce
Sr. VP Team Leader
(801) 885-3970





American Heart Association | **American Stroke Association**

Learn and Live®

Lawmakers mull government's competition with private sector

By Brice Wallace

The Enterprise

A few Utah lawmakers want to be sure government entities are not inappropriately competing with the private sector, or at least be sure they've weighed all their options.

At the Political Subdivisions Interim Committee's August meeting, representatives of several government organizations testified about the criteria used when cities, counties, educational institutions and special districts undertake activities deemed in competition with private companies.

"This is not designed to be confrontational," Rep. Curt Webb, R-Logan and co-chairman of the committee, said in prefacing the topic. "Neither is it a discussion about privatization at this point. Those discussions have been had, almost ad nauseum. But there's a sense out there that we have government competing with private industry in a lot of cases."

Webb said entities are involved in printing, lodging, housing, catering, road maintenance, recreation centers, convention facilities, schools and ambulance services that in some cases compete with businesses. Taxpayers often look favorably on those government activities because, if they are profitable, it might bring down

their taxes.

"The fear here is, if profit centers become popular, and they start to spread and the competition with private industry becomes widespread as well, then the argument will become 'who provides jobs better, the public sector or the private sector?'" Webb said.

The August meeting was designed to find out the scope of the practice and to get "a better feel about what's going on in the market," he said.

Greg Stauffer, associate commissioner for the Utah System of Higher Education, acknowledged that some level of competition with the private sector has been in place for decades. Aggie Ice Cream is one example. He cited several pros and cons of the activities and noted that students often see them as institutional services.

Webb took issue with the University Inn at Utah State University advertising to attract off-campus customers, which he considered direct competition with local private companies.

Patti Harrington, executive director of the Utah School Superintendents Association, said many schools get involved in instruction that mimics a workplace environment, such as child care, horticulture, catering and cosmetology. But those involve

entry-level skills and are education-focused, she said.

Roger Tew of the Utah League of Cities and Towns said the issues have been studied many times over the years. He said there are "inherent friction points ... that I'm not sure can be resolved."

Often the issue focuses on an activity or service that everyone acknowledges should be done but questions remain about the best way to handle it. Sometimes the question is simply "should government be doing it at all?"

Generally, there are three areas of competition, he said. One is basic infrastructure, such as providing electricity or broadband services. Another is recreation and the third is entertainment, in the form of community theaters, recreation centers, swimming pools and golf courses.

Adam Trupp, counsel for the Utah Association of Counties, said definite guidelines might not exist for entities to follow when considering undertaking competitive activities but those questions are raised. "I think those discussions go on frequently," he said.

Robin Riggs, a member of the Utah Privatization Policy Board, said his group plans to ask the legislature for funds in order to have a third-party study conducted on the issue.

Webb and Rep. Kevin Stratton, R-Orem, both said they want further discussion on the matter.

"What I want is ... even if we had this discussion every year, that there was an awareness in the public sector that they shouldn't be competing with private enterprise, in spite of the fact that there may be a profit incentive that may save

taxpayers money," Webb said. "That shouldn't be justification. Otherwise, you just run wild with that philosophy."

"I would just ask," Stratton said, "for the good of the health of our economic vitality in this state, that we continue this discussion and look at maybe some outcomes on how we could address the challenges before us in these areas."

Salt Lake metro area home starts up 78 percent in second quarter

New home starts in the Salt Lake City market during the second quarter 2012 totaled 1,768, which is a 78 percent increase compared to 1Q11, and 40 percent more than last quarter, according to the latest report by Metrostudy.

"While new home closings are not accelerating at the same pace as of yet, there has been a 6.9 percent increase in annual closings when compared to last year, to a total of 5,318 homes. Of this total, 1,411 occurred during the second quarter 2012, which is 24 percent more than last year at this time," said Eric Allen, director of Metrostudy's Utah/Idaho Region.

As the Greater Salt Lake market continues to work its way out of the housing slump, vacant developed lot inventory continues

to decline. In 2Q12, developers delivered 645 lots, while builders absorbed 1,768 lots, over 1,100 more than delivered. Currently there are 22,830 vacant lots on the ground, a 49.5 month supply, however the majority are controlled and not available for purchase. "The increased starts activity and minimal lot development has caused many builders to fear that the market could be faced with a lot shortage in the very near future," Allen said.

"With the recent improvement in jobs, along with a stabilizing housing market, there is no denying the fact that the Greater Salt Lake market is in recovery mode and appears to be gaining strength," he added.

The power of community involvement.

The power of **us**

"U.S. Bank employees take the brand line – 'All of us serving you' to heart. From volunteering in the classroom, to helping with the Bowl-a-thon, to serving on our Board, like Damon Miller does, I've found few companies whose people are so committed to their community."

Philip T. Cofield

President & CEO, Junior Achievement of Utah

U.S. Bank is proud to partner with Junior Achievement of Utah to help empower young people to own their economic success. Community involvement is at the core of our brand promise – All of us serving you. Because, we know it takes more than just financial investment to make our hometown thrive. It takes everyone doing whatever they can do, no matter how small, to help make a difference in people's lives. All across Utah, U.S. Bankers have volunteered more than 700 hours with nonprofit organizations, putting the power of US to work for Salt Lake City and the Greater Wasatch Front.

Like to help? Visit www.ja-utah.org



branch usbank.com

All of **us** serving you®

usbank



Deposit products offered by U.S. Bank National Association. Member FDIC. ©2012 U.S. Bank. All rights reserved.

.com/usbank

• Earnings Roundup •

Myriad Genetics

Myriad Genetics Inc., based in Salt Lake City, reported net income of \$29.1 million, or 34 cents per share, for the fourth fiscal quarter ended June 30. That compares with \$26 million, or 30 cents per share, for the same quarter a year earlier.

Revenue in the quarter totaled \$133 million, up from \$107.4 million a year earlier.

For the full fiscal year, the company reported net income of \$112.2 million, or \$1.30 per share, on company-record revenue of \$496 million. That compares with \$100.7 million, or \$1.10 per share, on revenue of \$402 million in the prior year.

Myriad Genetics produces molecular diagnostic tests to assess a person's risk of developing disease, guide treatment decisions and assess risk of disease progression and recurrence.

"Myriad achieved record revenue and operating profits last year," Peter D. Meldrum, president and chief executive officer, said in announcing the results. "We are committed to building on this strong performance in fiscal 2013 as we continue to execute on our strategic directives: to grow existing tests and markets, to expand internationally and to launch new tests, including companion diagnostics, across a diverse set of major disease indications."

ClearOne

ClearOne, based in Salt Lake City, reported net income of \$575,000, or 6 cents per share, for the quarter ended June 30. That compares with \$1.3 million, or 14 cents per share, for the 2011 second quarter.

Revenue totaled \$11.7 million, down from \$11.9 million in the year-earlier quarter.

ClearOne designs, develops and sells conferencing, collaboration, streaming and digital signage products for audio, video and data multimedia communication.

"Our financial performance for the 2012 second quarter met our expectations but did not match last year's record-setting results, due to overall softness in all the markets in which we operate," Zee Hakimoglu, president, chief executive officer and chairman, said in announcing the results. "We continue to build and align our sales channel and internal sales organization for the new video solutions we are bringing to the market. The new products from our acquisition of VCON are in production and will be shipping under the ClearOne brand at the end of this month. The introduction of these new software-based video conferencing products complements our industry-leading enterprise audio, expands our total available market

and we believe will make immediate contributions to ClearOne's top line."

inContact

inContact Inc., based in Salt Lake City, reported a net loss of \$1.7 million, or 4 cents per share, for the quarter ended June 30. That compares with a loss of \$2.1 million, or 6 cents per share, for the year-earlier quarter.

Revenue totaled \$26.2 million, up from \$21.7 million for the same quarter in 2011.

The company provides cloud products and services for contact centers.

"I'm pleased to announce another record quarter for inContact, providing us with strong progress towards our 2012 objectives," Paul Jarman, chief executive officer, said in announcing the results. "During the quarter, we closed 42 new customers and 27 expansion deals for a total of 69 contracts representing an all-time high for total contract adds. We continue to see an increase in the size and number of contact centers choosing inContact, and the estimated annual value of contracts closed in Q2 represents a 41 percent increase over the same period a year ago. ... As the cloud market opportunity continues to expand, we are successfully meeting the demand created by contact centers of all sizes, and we continue to take market share and see more enterprise opportunities than ever before."

Fusion-io

Fusion-io, based in Salt Lake City, reported a net loss of \$2.4 million, or 3 cents per share, for the fiscal fourth quarter ended June 30. That compares with net income of \$5.8 million, or 6 cents per share, for the same quarter in 2011.

Revenue was a company-record \$106.6 million, up from \$71.7 million a year earlier.

For the full fiscal year, the company reported a net loss of \$5.6 million, or 6 cents per share, on revenue of \$359.3 million. That compares with net income of \$4.6 million, or 6 cents per share, on revenue of \$197.2 million in fiscal 2011.

Fusion-io provides platforms and software-defined storage products designed to speed the movement of data.

"Fusion-io's 82 percent revenue growth and 130 percent non-GAAP (generally accepted accounting principle) net income growth over the prior year reflect a strong fiscal year 2012," Dennis Wolf, chief financial officer, said in announcing the results. "We reported record cash flow from operations, and we exit the fiscal year with a healthy balance sheet that gives us strategic flexibility.

Our goal for the coming year is to continue to execute on our growth strategy while furthering our technology leadership."

FX Energy

FX Energy Inc., based in Salt Lake City, reported a net loss of \$12.1 million, or 23 cents per share, for the quarter ended June 30. That compares with a loss of \$1 million, or 2 cents per share, adjusted for foreign exchange gains, for the same quarter in 2011.

Revenue totaled \$8.6 million, down from \$9.2 million a year earlier.

FX Energy is an independent oil and gas exploration and production company with production in the U.S. and Poland.

"We continue to believe that our focus on European gas production is the correct strategy for us," Clay Newton, vice president of finance, said in announcing the results. "As U.S. natural gas prices look to continue to be low for the next several years, the prospects for natural gas prices in Poland continue to be robust. The relatively high growth rate of the Polish economy and the country's reliance on foreign imports should support higher gas prices in Poland. ... Even the negative impact of a strong U.S. currency on our reported gas prices has a 'silver lining.' Notably, when employing U.S. dollars in Poland, the relative value of the dollar at its current level compared to the Polish zloty results in lower operating expenses and capital costs."

MatchingDonors

Donate Your Car, Boat, RV or Real Estate
You don't have to donate a kidney to save a life.

- We will accept any auto - running or not.
- 100% tax deductible.
- MatchingDonors.com is a 501C3 nonprofit organization.
- 100% of the proceeds will go to help saving the lives of people needing organ transplants.



Call us at 1.800.385.0422
Or donate on line at
MatchingDonors.com

**Construction Management
Design-Build
LEED® Construction**

Predictable Outcomes.

Layton
CONSTRUCTING WITH INTEGRITY

www.LaytonConstruction.com
(801) 568-9090



Utah Industrial Depot

Utah's low cost leader for industrial real estate.



Available spaces from 3,000 sq ft to 200,000 sq ft.
70% occupied and filling up fast. Call us today for a walk-through.

- Low lease rates from 15¢ psf modified gross;
- Land prices starting at \$1.40 psf;
- On-site rail service;
- Flexible terms and options; outdoor storage;
- Third fastest growing County in Utah.

UTAH INDUSTRIAL DEPOT
Tooele, UT
For more information,
call Deryl Davis at 801-330-6053

• Industry Briefs •

ASSOCIATIONS

• **Ski Utah**, a marketing firm owned and operated by 14 Utah ski resorts, has named **Susie English** as its director of communications. English will focus on sharing the message of Utah's ski resorts with local, national and international media. Most recently, she was marketing manager at Rossignol Ski Apparel, where she focused on strategic marketing, public relations and event management. Prior to that, she worked in the marketing department at Deer Valley Resort as the communications coordinator. A Park City native, English has a bachelor's degree in marketing and finance from the University of Denver.

BANKING

• **America First Credit Union** has hired experienced commercial finance professionals due to the recent growth of its business lending division. **Bette Taylor** will serve Salt Lake County companies as a business development representative. Taylor brings over 20 years of financial services experience and is a member of the Salt Lake Chamber of Commerce. Previously, she worked for U.S. Bank. **Dennis Butt** is a loan officer for America First's com-

mercial real estate operation in Davis County. Butt has worked in the financial services industry for 43 years with various institutions, mortgage and title insurance companies. **Ken Doutré** is an America First commercial loan specialist for Weber County business members. Doutré has 13 years of business lending experience from serving companies in Weber and Davis Counties. **Lane Swenson** is a commercial lending officer for Utah County business members. Swenson has over 20 years of commercial lending experience, previously having worked for Comdata Bank as chief lending officer.

COMPUTERS/ SOFTWARE

• Orem-based **DoxTek Inc.**, a provider of document management and accounting system and software integration, recently completed a project to integrate the **CentralUtah Water Conservancy District's** (CUWCD) scanning and document management system and its current accounting system to increase efficiencies and ultimately save CUWCD customers money.

CONSTRUCTION

• **Tyler Bernius**, an employee with **PSI** in Salt Lake City, has earned his professional engineer designation. Bernius is a graduate of Seattle University with a bachelor of science in civil engineering. He is a staff engineer with PSI, which he joined in 2006. PSI (Professional Service Industries Inc.) is an Illinois-based independent engineering and testing firm and one of the largest consulting engineering firms in North America, with approximately \$200 million in annual revenues.

• **FFKR Architects**, Salt Lake City, has named three new

principal architects to help lead the firm into its fourth decade. **Greta Anderson** became a licensed architect in 2004. She graduated from the University of Utah with a bachelor of science in architectural studies in 1995 and a master of architecture in 1997. Anderson has been with FFKR since 2005. **Steve Goodwin** became a licensed architect in 2000. He graduated from the University of Utah with a bachelor of university studies in 1991 and a master of architecture in 1994. Goodwin has been with FFKR since 1997. **Marianne**

Wander became a licensed architect in 1997. She graduated from the College of St. Benedict in St. Joseph, Minn., with a bachelor of arts in government studies and from the University of Utah with a master of architecture in 1993. Wander has been with FFKR for 14 years.

ECONOMIC INDICATORS

• **Utah tops the rankings of Ten Pro-Business States for 2012**, according to research by **Pollina Corporate Real Estate**. Utah had been second-ranked for the past three years. The research identifies states with exemplary pro-business policies that counteract the effects of economic instability. The authors of the study point to Utah as a guidepost, not only for other state governments, but also for the federal government. The report's co-author says that Utah is the first state west of the Mississippi River to attain the top ranking. The annual Pollina Corporate study was co-published with the American Economic Development Institute. It analyzes a state's pro-business environment across 32 individual measures that state governments control, including taxation, human resources, economic incentive programs



Everything for the
Contractors

We rent the best

4343 Century Drive
Salt Lake City, UT 84123

801- 262-5761

www.centuryeq.com

Plans online at
MAPRonline.com



Call (801) 288-1188
**Regional coverage of
many owners; inter-
national coverage for
the LDS Church**

EnableUtah

PACKAGING

DOCUMENT DESTRUCTION

JANITORIAL SERVICES

WOOD PRODUCTS

ORDER FULFILLMENT

TEMPORARY EMPLOYMENT

ASSEMBLY

DOCUMENT MANAGEMENT

COMMERCIAL LAUNDERING

LASER ENGRAVING

CLEAN ROOM OPERATIONS

MAIL SERVICES

CFC APPROVED CHARITY
CARF ACCREDITATION SINCE 1979
WWW.ENABLEUTAH.COM

FOR MORE INFORMATION CALL: JARED DAIN 801-725-0752

and state economic development efforts. Specific measures that helped determine Utah's top ranking included right-to-work legislation, business tax structures, energy costs and educational attainment rates.

EDUCATION/TRAINING

• **Dallas Robinson**, a business management student in **Utah Valley University's** Woodbury School of Business, was named one of nine **2012 Forbes All-Star Entrepreneurs** in the September edition of the business magazine. The honor recognizes college entrepreneurs who have started a business with at least \$100,000 in sales while still a full-time student. Other honorees included students from Harvard and Yale. Robinson and business partner and classmate Mike Buonomo created **Kisstixx**, a lip balm that comes in two complementary flavors that combine when users kiss. The pair were mentored by faculty and staff at UVU who helped them come up with a business plan and make the lip balm concept a reality. They appeared on the ABC television series "Shark Tank," during which billionaire mogul and NBA Dallas Mavericks owner Mark Cuban invested \$200,000 in **Kisstixx**. They also won the U.S. Small Business Administration video contest that was featured on the White House website.

FINANCE

• The **Goldman Sachs 10,000 Small Businesses (GS 10KSB) program** at Salt Lake Community College invites eligible business owners to attend an **information session** about the business management program, which launches Jan. 11, 2013. Business owners who would like to apply for the 10KSB program are also invited to attend an application workshop. Applications for the program will be accepted through Oct. 1. Goldman Sachs' 10KSB is a training program for business owners who have passed the startup phase and are poised for growth. Participants accepted into the program will receive a full scholarship to 10KSB, which includes comprehensive business management education curriculum, a suite of business support services such as one-on-one business advising and networking clinics and opportunities to access capital. For a schedule and more information, visit www.slcc10ksb.com/key-dates.

GOVERNMENT

• For the next three weeks, residents and commuters in Salt Lake City will encounter posters throughout neighborhoods, bus and transit shelters, recreation centers, community events and other public places that pose the question, "What is your favorite thing about Salt Lake City?"

Respondents are directed to text their answers to 801-430-9863. Staff from Salt Lake City's planning division will access that information through a Web portal and use it to shape the city's new comprehensive plan, **Plan Salt Lake**. Plans are also in the works to give the information back to the public.

• The **School Children's Trust Section** of the Utah State Office of Education announced that **\$29 million is being distributed** through the School LAND Trust Program for the 2012-13 school year, the largest distribution ever since the program was created in 2001. SITLA's revenue comes primarily from natural gas, coal, oil, real estate development, and other surface uses such as grazing. All net revenue from the trust lands is deposited in the permanent State School Fund and invested by the State Treasurer with the advice of the Investment Advisory Committee. The interest and dividends from the fund are distributed annually to Utah's schools. SITLA manages 3.4 million acres of Utah trust lands for the financial benefit of Utah's public schools and 11 other public institutions.

HUMAN RESOURCES

• **Expanding employee waistlines could be shrinking company bottom lines**, new research out of **Brigham Young University** shows. The study, led

by BYU health science professor **Ray Merrill**, finds that employees with unhealthy habits are causing substantially higher levels of lost workplace productivity. Researchers believe the study to be one of the most comprehensive efforts to date on "presenteeism" – the idea of being present at work, but not performing optimally. Researchers collected data on 19,803 employees from three large, geographically dispersed companies. Findings indicated that employees with an unhealthy diet were 66 percent more likely to report having a loss in productivity as opposed to healthy eaters. Likewise, employees who only exercised occasionally were 50 percent more likely to report lower levels of productivity versus their exercising colleagues. Employees who had difficulty exercising during the day were 96 percent more likely to have increased productivity loss. Smokers were 28 percent more likely to report suffering from a drop in productivity. Employees who rarely eat fruits, vegetables and other low-fat foods at work were 93 percent more likely to have a higher loss in productivity. Those who didn't believe their workplace would support them in becoming healthier were more likely to have a drop in productivity.

LAW

• **Alan L. Sullivan**, a partner in the Salt Lake City office of **Snell**

& Wilmer, has been inducted into the **International Academy of Trial Lawyers (IATL)**. The IATL limits membership to 500 Fellows from the United States. It seeks out, identifies, acknowledges and honors those who have achieved a career of excellence through demonstrated skill and ability in jury trials, trials before the court and appellate practice. Members are engaged in civil practice on both the plaintiff's and the defendant's side of the courtroom, and the trial of criminal cases. Sullivan has been practicing in Utah for over 30 years, concentrating in commercial and intellectual property litigation, health care litigation, and securities litigation. He frequently represents lawyers and law firms in relation to ethical issues pending before courts and disciplinary boards.

MANUFACTURING

• Provo-based **Morinda Bioactives** (formerly Tahitian Noni International) was named the winner of a Bronze Stevie Award in "Best New Product or Service of the Year-Consumer Products" category in The 9th Annual **International Business Awards** held last week. Morinda Bioactives won for its **Thrive Adaptogenics Max**, a proprietary blend of noni, blueberry, olive and cornelian cherry.

• **GOAL ZERO**, a Bluffdale-

continued on page 9

We're banking on the businesses.

We're for those who take a dream, make it a plan, then turn it into a reality—the ones who pursue free enterprise at all costs, and just happen to build a stronger America along the way.

We're for the businesses. So we're transforming ourselves to become the preferred banking solution for business—and the people who make business happen. If that sounds like the right kind of bank for you, let's talk.



awbank.net

Find us here:	EPHRAIM: 435.283.4621	EPHRAIM NORTH: 435.283.5720	FAIRVIEW: 435.427.3361	MT. PLEASANT: 435.462.2457	LOA: 435.836.2395	NEPHI: 435.623.0651	PRICE: 435.637.1272	SPRINGVILLE: 801.491.0900	SLC-WALKER CENTER: 801.715.3100
	OREM: 801.225.0571	OREM NORTH: 801.434.8200	PROVO: 801.342.6000	PROVO NORTH: 801.377.2190	SALEM: 801.423.1456	SANDY: 801.727.2000	ST. GEORGE: 435.628.8400	SOUTH JORDAN: 801.208.4090	

Member FDIC. Equal Housing Lender.

JOIN OUR NIGHTLY CELEBRATION OF FOOD, WINE & MEMORABLE TIMES



Prime Steak & 100 Wines by the Glass

Fleming's features the finest prime steaks and an award-winning list of 100 wines by the glass. Join us for an evening with family & friends in our lively, relaxed atmosphere.



Fleming's[®]

PRIME STEAKHOUSE & WINE BAR

20 South 400 West, Salt Lake City

801-355-3704

www.FlemingsSteakhouse.com/SLC

from page 7

based innovator of portable solar power systems, was named to *Outside* magazine's fifth annual "Best Places to Work" list. GOAL ZERO was selected for enabling employees to pursue an active work-life balance while fostering an environment of innovation and collaboration. The company office space features an onsite gym, climbing wall, community garden and a slide connecting the first and second floors. Employees can work four 10-hour days and take Fridays off throughout the year.

• **Profire Energy Inc.**, which has offices in Lindon, Houston and Canada, has filed a patent application related to the company's new mobile burner management systems (BMS) demonstration unit. Profire manufactures, installs and services BMSs for the oil and gas industry. The company said the application is intended to protect a proprietary mobile demonstration unit used by Profire Energy's sales and marketing teams to display the product's functionality to potential clients in virtually any location, something that was not previously possible. The unit allows the company's BMS to be safely transported in a protective case and then displayed easily when needed. The company said it has increased its efforts to protect its intellectual property

and maintain legal control of its products as it continues to develop new products and features.

NATURAL RESOURCES

• The **U.S. Army Corps of Engineers** has selected **Hunt Electric, CDM Smith and Infinia Corp.** to begin design and construction of a solar project this fall at **Tooele Army Depot**. The 17-acre project will generate 1.5 megawatts of electricity. With an existing wind turbine, nearly 60 percent of the depot's energy will be supplied by on-site renewable resources.

NONPROFIT

• Salt Lake City nonprofit **Splore** has named **Janine Donald** as its new executive director. She has been with the organization for nearly five years and has served as a volunteer, guide, program manager and, until recently, associate director. Splore's mission is to provide empowering experiences through recreation and education programs for people of all abilities.

• The **Road Home Apple Tree program**, a four-week campaign to collect new clothing and school supplies, culminated Aug. 20 with the delivery of more than 5,600 items for 150 school-aged children living in the **Road Home Shelter**, Salt Lake City's family homeless shelter. As part

of the event, each child received a backpack filled with shirts, pants and shoes as well as with school supplies. Apple Trees with paper apples featuring specific children's needs were set up during July and early August at various businesses, including **DownEast, Payless ShoeSource, Salt Lake area Staples, Sanctuary Day Spa and Intrepid**. Participants selected apples and purchased needed back-to-school items for the children listed. In addition to the donations from the community, Sanctuary Day Spa provided haircuts for all the school-aged children and **Helping Hands Moving** picked up and delivered all of the donations. **Miss American Indian USU** also collected socks and underwear for each child.

REAL ESTATE

• **Eightline Real Estate**, Salt Lake City, has added **Melanie Borgenicht**, owner of Red House Consulting, to its team. She specializes in property design, home staging and color consulting and is currently completing courses at Stringham Real Estate School to earn her real estate license.

RESTAURANTS

• Two new restaurants are slated to open or slated to open at **Station Park** in Farmington in the next few weeks. The opening of **Park Stone Wood Kitchen**

and **Sushi Monster** at the open-air shopping and entertainment center will create a total of eight sit-down and quick-serve restaurant options, including a Harmons Grocery Store. Parkstone Wood Kitchen opened Aug. 20. The menu offers a variety of steaks, ribs, wood-fired pizzas, soup and salad. It also offers more than 30 draft beers and 20 bottled beer options and is owned by Allan B. Gantes. Sushi Monster will open its second Utah location at Station Park in early September. The owner of the Japanese food restaurant plans to offer two new menu items that aren't available elsewhere in the state, including lobster and giant clam sashimi. The new restaurant will seat about 100 people.

• **Z'Tejas**, a Southwestern grill in downtown Salt Lake City, has hired **Sam Lubing** as its executive chef. Lubing was most recently with Salt Lake's Red Iguana Restaurants, overseeing the kitchen, dining room and catering operations. Prior to that, he was general manager and executive chef for Gepettos Restaurant in Holladay. Lubing has worked in various management, chef and catering roles for restaurants in California, Idaho, Oregon and Colorado. He is a graduate of the Western Culinary Institute and holds several professional certifications and memberships.

SERVICES

• **Larkin Mortuary**, Salt Lake City, will hold its 2012 **Larkin Charity Golf Classic** Aug. 29 at the Eaglewood Golf Course in North Salt Lake. This year's benefactor will be the University of Utah HealthCare's Caring Connections - A Hope and Comfort in Grief program. For more information about the tournament, visit <http://golfclassic.larkincare.com/>.

TECHNOLOGY

• **Control4**, a Draper-based innovator in residential and light commercial automation systems, said the newly built luxury **Montage Deer Valley Residences** will feature Control4 smart home solutions. In April of 2011, Montage Deer Valley unveiled the Control4 hospitality solution in a total of 154 deluxe guest rooms and 66 suites within the resort. Control4 implementation within the Montage Deer Valley resort includes automation of lighting and temperature, fireplace control, entertainment, remote controlled privacy settings and energy saving features. Now, just a little over one year since the introduction of Control4 in the resort, the Montage Deer Valley is offering Control4 smart home technology to owners of its new private residences.

WHERE'S PHILO?

In 1928, Utah native Philo Farnsworth invented the television. A little guy with a big idea.

He made his concept a reality and eventually spawned dozens of companies, employing thousands of people and putting billions of dollars into the economy.

We're looking for people just like Philo. If you have the next big idea or a robust business ready to jump to the next level, we're ready to help you grow it.

*It's the next round of the **Grow America Springboard™ Competition**. There's a total of a million dollars in cash and prizes and we're giving it away. No strings attached.*

Visit us at: growam.com/springboard and enter the competition today.

Competition Dates:
July 23, 2012 — August 30, 2012

Final Show and Expo:
November 1, 2012
Salt Palace Convention Center

GrowAmerica™
SPRINGBOARD

ZIONS BANK

Comcast
SPOTLIGHT

Comcast
BUSINESS CLASS

KJZZ 14

AZL

02
KUTV



BANK of UTAH

BUSINESS SPOTLIGHT

Total Fitness, Inc. – A “Healthy” Business

Total Fitness Inc. is just what its name implies, a fitness center that includes everything from cardio and strength training equipment to group exercise programs such as yoga, cycling, dance, muscle endurance training, mixed martial arts and Pilates. However, what the company’s name does not imply is that it is also the home of the famous Salomon center’s iFly, Flowrider and iRock.

Gary Nielsen, owner of Total Fitness Inc., takes much pride in his business. “The fitness classes offered at the gym are some of the best in the country,” says Gary. “We have over 20 different classes offered that are taught by highly qualified and certified instructors.” Furthermore, the iFly (indoor skydiving wind tunnel) and Flowrider (indoor wave machine) are two unique attractions at Gary’s Salomon center, located in downtown Ogden, that have significantly contributed to the city of Ogden’s goal of being the recreation center of Utah. “The Salomon center is a central draw for people to come back to downtown Ogden,” Gary said.

Almost 20 years ago, after working in the manufacturing business for 10 years, Gary Nielsen decided it was time for a change. In 1993, he left his manufacturing job for a management position at Deseret Gymnasium, a fitness center owned by The Church of Jesus Christ of Latter-day Saints. Being a very active and athletic individual throughout his entire life, Nielsen found the position at the gym to be very appealing. “The manufacturing business was a rough and hazardous environment,” says Nielsen. “It was refreshing for me to change to a career that allowed for a much healthier lifestyle.”

Within eight months, Gary was offered the opportunity to purchase Deseret Gymnasium. Gary seized this opportunity, went to the Bank of Utah, secured his first SBA loan, and changed the name of the gymnasium to Total Fitness Center. In reference to this purchase Gary confessed, “It was risky. We had to mortgage everything we had — everything we had worked for over the past 18 years was put on the line to go into business. It took a lot of hours and hard work, but it certainly has paid off.”

Paid off it has. What started as one gym with 35 employees has grown into four fitness centers with approximately



Gary Nielsen stands before one of his many Utah fitness businesses.

240 employees and over 10,000 members. Since 1993, Gary has continued to expand the company’s service offerings and has strengthened its brand recognition. In 1999, with the purchase of a gym in Roy, Gary became a Gold’s Gym franchise owner and changed the name of his gyms from Total Fitness Center to Gold’s Gym. By 2007, Gary had moved one of his gyms into the

Salomon center in downtown Ogden and got involved in three additional businesses: iFly, Flowrider and iRock.

Gary is not the only Nielsen responsible for the company’s success; Total Fitness Inc. is a family business. Gary’s wife, Peggi Nielsen, who has been teaching

see SPOTLIGHT page 17

NEED YOUR BUSINESS TO FLY?

Flight Instructions Available at Bank of Utah.



BANK of UTAH
Experience. Service.

Call 801-409-5055
1-800-516-5559

Equal Housing Lender | Member FDIC



Gary Nielsen
iFly at the Salomon Center
Ogden, UT

Fawn Robinson
Gary’s Banker

Small Business in Utah

A step-by-step guide to conducting internal investigations

This article is part II of a two-part series on internal investigations. For the full article, please visit www.ClydeSnow.com/articles-database.

An employer faced with potential litigation may find conducting an internal investigation to be a daunting and complex task. However, adhering to the following guidelines may help employers mitigate disruption in business, gain cooperation from involved parties, assure the overall timeliness and efficiency of the process and ensure the legality of investigatory procedures.

Temporary Remedial Measures.

Once a workplace incident occurs that necessitates an investigation, management should immediately and proactively act to ensure that the conduct complained of does not continue to occur during the pendency of the investigation. For example, an employee accused of sexual harassment should be separated from the alleged victim. This might even include leave for the accused until the investigation is complete.

Setting the Scope of the Investigation. Not every investigation needs to rise to the level of the Spanish Inquisition. Leading up to the investigation, the investigator should identify the scope and parameters of the investigation, keeping in mind that while the investigation should be thorough, the disruption to the company's business should be the least amount possible. The investigator should consider and determine the following: subject matter and timeframe of the investigation; issues to be covered or not; whether sufficient review of employment policy and procedures has taken place; potential obstacles; documents to review and gather prior to proceeding; electronic information to be included and gathered; witnesses to interview; who, if anyone, to put on leave; which employees' e-mails, text messages or electronic media should be reviewed; and whether the company's electronic communications policy allows a company investigator to review employee e-mails, text messages, and other electronic media.

Collecting and Reviewing Evidence. Pursuant to company policy (including electronic communications policies), the investigator should obtain and review evidence that is related to the investigation. This evidence may

include documents, personnel files, written formal and informal complaints, surveillance video, voicemail recordings, text messages, e-mails, public social media postings and any other electronic or tangible documents related to the incident. This process should typically be completed prior to witness interviews so the investigator has sufficient data to ask appropriate, probing questions. The investigator should maintain a separate investigative file that organizes and preserves all of the relevant evidence and eventually the investigators findings.



Christopher Snow

General Considerations for Conducting Interviews. The investigator should have an additional assistant with him or her who is dedicated to taking copious notes. The interviewer should be focused on the questions and not on the note-taking. Also, having an additional person at the interview will provide credibility to the substance of the interview.

For the most effective investigative interviews, investigators should pay heed to some best practices. Always start with asking the employee to tell the truth and assure them they will not be retaliated against for participating in the investigation. Then, explain the general purpose of the interview (e.g., "There has been a report of sexual harassment against _____, and we wanted to ask you a few questions concerning any knowledge or information you have about the incident."). Begin the interview with broad, open-ended questions and narrow them as you go. Other tips for a successful interview process include the following: be sure to appear impartial and not take sides; don't be afraid of silence; follow up with detailed questions on the source of information provided; importantly, avoid disclosing the information you received from other witness interviews; do not finish the employee's sentences or interrupt the employee's responses; save tough or confrontational questions until the end, but be sure to ask the tough questions to ensure you have all the information the witness has; and, in the event the employee refuses to talk or provide answers to specific questions, then document the insubordination.

The following types of questions should be asked in every investigation: Who?

What? When? Where? How? Why did this happen? What other employees or individuals might have relevant information? What could have been done to avoid the incident? What evidence do you have concerning the incident (notes, e-mails, text messages, and recordings)? Who have you told about the incident?

Interviewing the Complainant. Typically, the complainant is the first to be interviewed. The investigator should explain his or her investigatory role to the complainant, acknowledge that the employer takes the complaint seriously and is appreciative of the complainant's willingness to come forward with the complaint, and avoid promising anonymity. It is best if the complaint is received officially in writing. But if the complainant does not wish to give the complaint in writing, the investigator could write the complaint and have the complainant sign it.

Interviewing the complainant alone is preferred, but often a complainant wishes to speak to the investigator with a companion or confidant in the room. Having someone else in the room may impact the truthfulness or completeness of the complaint and its details. If the employee is non-union, the general rule is to not allow representation or an additional third party to attend the interview.

There are many questions that an investigator could ask the complainant, but at the very least he or she wants to ask the basic who, what, where and when questions. Who committed the alleged harassment or misconduct? What exactly occurred or was said? Where did it occur? When did it occur and how often? Did the complainant tell the offender that the conduct was offensive and that it must stop? What else did the complainant do to discourage the conduct? Is the offensive conduct still occurring? Did the complainant report the incident to his or her supervisor or anyone else in management? Did the complainant mention the incident to a co-worker or anyone else? Did the complainant make a complaint under the EEOC policy? Are there witnesses, documents, or other evidence that corroborates the complainant's allegations? How did the harassment or misconduct affect the complainant (psychologically, physiologically and economically)? Why does the complainant think this happened? Who does the complainant think is to blame? What was the complainant's working relationship with the accused? Does the complainant think this could have been avoided? If so, how? Does the complainant know if the person who harassed him or her harassed anyone else? Does the complainant know if anyone has ever com-

plained about harassment by that person? How would the complainant like the situation resolved?

Interviewing the Accused. After interviewing the complainant, the investigator typically should get a response to the allegations from the accused. It may be advisable to interview any available witnesses first, to get a better understanding of what may have occurred, before interviewing the accused. The investigator should explain that a claim of inappropriate conduct has been made, and that the employer is attempting to determine whether the allegations have merit before making any personnel decisions. The accused should be told that all information from the investigation will be handled as discreetly as possible. It also needs to be clear to the accused that there are policies against any form of retaliation — that it will not be tolerated and could result in discipline or even termination, if necessary.

With respect to specific questions for the accused, there is important ground to cover:

An effective starting point is to ask the accused if he or she is aware of any personnel issues in the workplace. If the employee denies any such knowledge, the investigator should then give the accused a brief description of the allegations against him or her.

see INVESTIGATE page 14



Finding the Perfect Fit

Makes all the Difference.

SUCCESSFUL BUSINESSES, like puzzles, require perfectly placed pieces working together.

Take the guesswork out of running your business and let our attorneys be your perfect legal fit.

Business & Transactions

Commercial Litigation

Securities

Employment

White Collar Criminal Investigation

Estate & Tax

ClydeSnow
ATTORNEYS AT LAW
www.clydesnow.com

ONE UTAH CENTER, THIRTEENTH FLOOR
201 South Main Street
Salt Lake City, Utah 84111
P: 801.322.2516, F: 801.521.6280

Connect with us:



Global sales needs are also local sales needs

I'm traveling to Warsaw, Poland, next month to deliver two public seminars. After a couple of Skype interviews, I discovered that although the United States and Poland are 5,000 miles and many, many cultures apart, our sales needs are the same.

To prove my point, here's a portion of the question and answer interview I did:

"Jeffrey, everyone needs to increase sales, especially during this economic crisis. Everyone is looking for some magical formula or shortcut. You write there is no formula, but there are rules to follow that will lead you to the promised land of more sales. What's the best way to keep up sales during the current recession?"

Recession means "less," not "none." Salespeople have to fight harder during tough economic times. I recommend having a morning breakfast (or coffee) with a client or a prospective client. This gets your day started early and on a positive note. But this is only ONE way to keep your sales up. It takes a concerted effort that includes social media, solid relationships, referrals and attraction. It's not impossible – and it's NOT easy. The good news is most salespeople are not willing to do the preliminary hard work it takes to make sales easy.

"How about sales channels? You talk a lot about different media (e-mail, video, social networks, etc.) as ways of selling. How is the role of the salesperson changing, and what's changing in terms of which sales channels are being used right now?"

The Internet and all forms of social media are the new channels and the NOW channels. But it's not ONE channel – it's ALL of them – each with their own formula for attraction, engagement and connection. Is there one key element that's a constant across all channels? Yes, the element is perceived value to the recipient.

"In your newest book *Social Boom* you say that social media is the new cold call. How does that work best?"

Here's the short version of using social media to connect for the first time: I can find anyone on LinkedIn, and then by using simple Google search and research, I find out everything I need to make a personal connection. Once I connect, I ask for an informal meeting (usually coffee) to see if we have anything in common, or if there's a need for my product or service. The secret is the first call is NOT a sales call, and the first meeting is NOT a sales pitch.

"You state, 'People don't like to be sold, but they love to buy.' One of the things people can take away from that is to be themselves and be authentic as a leader or as a salesperson. How is authenticity important in sales?"

For maximum clarity, let's separate this question into two answers:

1. **BUYING.** The key to selling is uncovering WHY the prospect wants to buy. Also called a "buying motive," it reveals the real reason for purchase. This strategy is much more powerful than trying to convince the buyer that your product is great by trying to "sell" it.

2. **AUTHENTICITY.** Authenticity is a characteristic that the prospective customer PERCEIVES as the presentation and the relationship move forward. Authenticity is not a

specific characteristic – it is derived from the ethical, honest, and consistent actions of your total words and deeds.

"Leaders must prove their own authenticity and the authenticity of their company. Tasteless, forgettable mission statements don't have the force of attracting strong customers. What defines glorious organization in the 21st Century?"

Most companies, especially large ones, fail to understand the difference between a mission statement, a value statement, a vision statement and a hot air marketing message that no one understands or believes in. A company needs TWO mission statements: One for the company and one for its salespeople. If you give salespeople a real mission, they will accomplish it. It is also important to understand that "core values" must precede "mission" – it has nothing to do with being "number one," it has everything to do with being "best." Apple has proven that, and the world needs to learn that lesson.

"Is it true that many leaders are not keeping up with changes in the market, changes in technology, and changes in human capital needs? Should they be blamed for sales losses and errors?"

Leaders are only partly to blame. When they are not on top of market changes and technology updates, they are giving their people permission to do the same. But the real issue is the talent pool that the leader creates. Human capital, if chosen correctly, can create their own examples by taking responsibility (the opposite of blame) for the generation of new ideas and products to stay ahead of their market.

"What are the key indicators in the candidates you're shortlisting when you're recruiting for a sales position?"

Here's the SHORT list for hiring the best people: Smart, self-starting, positive people with a past history of success. The rest (including selling skills) can be taught.

"What mistakes have salespeople frequently made, and what's the best way to correct them?"

The biggest mistake salespeople make is thinking it's all about "product" and "price." They fail to understand that believing in every aspect of self, product, company and customer will lead them to the success they (you) are hoping for.

ASK YOURSELF THIS: Is my world different from their world?

I guarantee you have the same issues, questions, and concerns in your company – and in your sales – as they have in Warsaw.

The world is small. Your world is smaller. Answers are becoming universal.

Jeffrey Gitomer is the author of *The Sales Bible*, *Customer Satisfaction is Worthless*, *Customer Loyalty is Priceless*, *The Little Red Book of Selling*, *The Little Red Book of Sales Answers*, *The Little Black Book of Connections*, *The Little Gold Book of YES! Attitude*, *The Little Green Book of Getting Your Way*, *The Little Platinum Book of Cha-Ching*, *The Little Teal Book of Trust*, *The Little Book of Leadership*, and *Social BOOM!* His website, www.gitomer.com, will lead you to more information about training and seminars, or e-mail him personally at salesman@gitomer.com.

© 2012 All Rights Reserved

Client relations – the natural progression

As professional service providers, we must realize that "the client" is the alpha and the omega of business survival. Therefore, it is imperative that you focus a large portion of your efforts toward developing strong relationships with your clients. To me, there are three primary steps to do so. First you must *know* your clients, then you must *inspire* your clients, and only then can you ultimately *serve* your clients. Let's touch on each of these steps.

I often say that clients work with people they like and they trust. In other words, you can spend years "marketing" a client, but they won't hire you until they say to themselves "he/she can help us" and "I'd like to work with him/her." Sounds simple, but it takes a lot of effort, time and smarts to get a client to that point. This article is not about how to get face-time with clients, but from the point where you have face-time from the first engagement. Perhaps successful client contact techniques or "getting in the door" can be another subject for another day, but for now, let's focus on the first meeting and beyond.

The essence of business development is to "listen and apply." It's not about selling, it's about helping! If we are committed to learning from clients, their needs, their issues and their plans first, we are on the correct path. We get to really *know* our clients by actively listening to them and digesting their perspectives. How can you possibly offer services, solutions or even ideas if you don't understand what their present and future needs are? Truth be told, you really can't ... unless, of course, you consider yourself as a commodity and not a professional service provider. Asking questions is the foundation of a meaningful conversation. Other than their issues and their plans, make sure you ask about their past consultant relationships. What do they like or dislike when working with a (whatever you are)? What do you expect from a (whatever you are)? Only after you execute such a comprehensive inquiry can you truly share thoughts that might help your goal of turning this effort into a mutually beneficial business relationship. Also remember this: from the very first encounter, they are determining if they will have any interest in working with you even more than if they have any interest in working with your firm.

Once you get to know your client, what they need and what drives them, it is time to *inspire* them to want to work with you and allow you to help them with their business. This is when the "apply" comes in from the "listen and apply" theme previously mentioned. Whether a client has work for you or not, it is your responsibility to make sure they know you care about them and their business. Therefore, take every opportunity to inform them on trends, successful outcomes, lessons learned, relevant events or any other elements that may impact their future activities. Providing these regular tidbits of information or insight is an outstanding way to prove that you care about them. What you want is for them to be transferring the thought that "he/she is just trying to get work from us" to "he/

she really cares about helping us." Again, it's not about selling, it's about helping! There are numerous things you can do to help inspire a client to hire you. Some of the most basic fundamental differentiators, however, are often overlooked. They include always being professional, returning your phone calls, and doing what you say you are going to do. Clients are experts at knowing if they feel valued. Do you think your clients feel valued if you fail at any of these (what must be) daily commitments?

A bonus (and certainly overlooked) tactic for inspiring a client to want to work with you is the natural and convicted ability to truly differentiate yourself. You do know that your clients are always asking "so what" with everything you claim, right? Well, they are. They want to know what makes you different from all the other (whatever you are) firms knocking on their door every day. When asked that inevitable question, "so,

what makes you different?" most people retort with something revolving around how many years their firm has been in business, where their offices are located, how many people they employ or how many projects they've completed. Guess what ... you haven't answered their question because more than likely someone else can say the same thing. To truly differentiate yourself, you must be able to genuinely share *how* you do things and *why* your people and processes have created successful outcomes for your clients in the past. This is the kind of unique value proposition information that can help your clients really gain a comfort level of choosing to work with you over others.

So, you've learned your clients' needs and you've inspired them to choose you. Now it is time to *serve*. It's time for your people to do what they do best. It is not time, however, to stop your commitment to client relations. Statistically speaking, it is seven times more costly to gain a new client than it is to maintain an existing one. Never stop investing time in understanding what your clients need, want and are thinking. As such, regularly execute client satisfaction discussions to make sure a small thing doesn't become a big thing. Hearing how great things are going is fine, but you most certainly want to know if you can be doing anything at all differently. Again, you are proving you care about helping them by being at your best consistently.

In business, things happen that are not planned for or even anticipated. What's important is not that they happened, but how you reacted to them. If you truly understand what makes your client tick and they truly understand how much you want to help them, then little glitches can be solved openly and effectively. Isn't that what good client relations is all about?

Michael T. Buell, FSMPS, CPSM is the marketing director at MHTN Architects Inc., a Salt Lake-based architecture design firm that provides vision-focused results for educational, healthcare, corporate, civic and cultural clients locally, regionally and around the world.



Jeffrey Gitomer



Michael Buell

Business ideas to challenge our thinking

By John Graham

The company president was excited about a popular cartoon depicting warriors fighting a battle with bows and arrows, along with a suited salesman carrying a machine gun and a briefcase. "Can't you see I have no time to see a salesman?" says a beleaguered officer. "I've got a battle to fight." Ironically, this is the same executive who nixed new opportunities for his company to grow its sales.

Ideas challenging the status quo can face roadblocks in just about any company, whether in sales, marketing or, most importantly, the future. Yet, it may be that those are ideas that can let in more light so that effective change can take place. Here are six of them:

• **Business owners can be wrong.** Scratch entrepreneurs and it doesn't take much to discover their immense pride in the business and, ironically, a dogmatic belief in their own ideas that may do it damage.

A president of a highly successful industrial business became so enamored with breaking new ground in his industry by selling equipment on the Internet that he made a substantial investment in an e-commerce website without taking the time to determine whether or not customers would purchase his company's type of products online. The venture failed and, worse yet, just at the time when the recession began taking its toll on the economy.

What we think about our business can distort reality and interfere with meeting today's challenges and tomorrow's opportunities.

• **Everything is never on the table.** It's pure posturing and anyone who puts it to the test gets hurt. Just ask GM's recently fired marketing chief, Joel Ewanick. He's the one who came up the campaigns for Chevrolet, "Love it or return it" and "Chevy runs deep." He also opted out of Super Bowl XII advertising and canceled GM's Facebook ads just prior to the social media giant going public.

Most revealing, he also discovered that other things run even deeper at GM, namely, "That ain't the way we do it around here." When someone says, "Everything is on the table," don't believe it. They may think they mean it, but putting them to the test can be dangerous. There are always ideas, practices and activities that are untouchable.

• **It's all about strategy.** When the *Boston Business Journal* asked Mark B. Kerwin, deputy director and chief financial officer of Boston's Museum of Fine Arts, about the biggest challenge he faces in his field today, he gave his answer in six words: "Staying strategic as opposed to tactical."

Steve Jobs couldn't have said it better. First and foremost, he was a brilliant strategist. His commitment was to building a company that built beautiful things that consumers admire and love to use in their daily lives. It's no accident that M.G. Siegler of TechCrunch describes Mountain Lion, Apple's latest operating system, as "definitely the most polished and robust version of OS X yet."

Tactics are easier to understand and far more fun, but most of the time, they're temporary and don't advance us to the goal.

• **"Customers for life" is deception.** Why? Because it's counterintuitive, naïve and dangerous. Yet, these three words seem so ingrained in our thinking that Googling them produces 1,390,000 results. Even against such a mountain of evidence, it's still an illusion.

On the face of it, it should be obvious that customers are *never* for life: they die, find a better deal, move, change their lifestyles, retire or want something new. In B2B, some merge or

sell, go out of business or become obsolete.

In spite of doing everything possible to keep customers happy and satisfied, they still leave. Yet bloggers, speakers and business writers implore us to embrace the belief that we can keep them forever.

Businesses are best served by abandoning mythical thinking, such as "customers for life," and embrace reality with a "nothing is forever" mentality.

• **Downed by the demon of self-deception.** More than just about anything else, self-deception is the biggest human stumbling block, and just about every business is plagued with this unrelenting problem.

In a study of a group of college students, researchers discovered that cheating gives students false confidence in their abilities, according to a report in the *Chronicle of Higher Education*. The upshot seemed to be that once we lie, it doesn't take much for us to convince ourselves that we're not lying.

Ask the president of a highly successful consumer services company to describe his primary business objective and he would undoubtedly say, "Putting our customers first." In all sincerity, he would mean it. Yet, this same president sent a letter to his customers filled with dozens of references as to why customers should do business with his company, but no rationale was given as to why it would benefit the customers to do so. It was if he was writing the letter to himself.

To test out just how widespread self-deception is in business, watch the employees' faces when the president or sales manager is holding forth on the company's newest product launch, announcing next year's goals or the need to increase productivity. Then you can see the clash of two quite different realities.

• **Forget about "The Great Person."** At Talbot's, the women's clothing retailer, there has been a parade of CEOs, each one with *the* answer to the company's troubles and each one taking it deeper into lower sales and increased debt. The story is the same at Yahoo, where hope now hangs on yet another CEO.

It might be helpful if boards of directors stopped wanting to believe that the next executive holds the key. The "Great (Man) Person Theory" has had its day, even though its vestiges can be found everywhere, including business.

The fallacy rests in believing that success will follow with the right person. But, as science writer Matt Ridley says (*Wall Street Journal*, 5/22/10), innovation depends on exchange. For example, he points to Uruk, in Southern Mesopotamia. It "was probably the first city the world has ever seen, housing more than 50,000 people within its six miles of walls. Uruk, its agriculture made prosperous by sophisticated irrigation canals, was home to the first class of middlemen, trade intermediaries."

Arguably, it's the same in America: Silicon Valley in technology, Boston in medical care, New York in finance and Las Vegas in casinos.

As Ridley points out, "In the modern world, innovation is a collective enterprise that relies on exchange."

In business, as elsewhere, ideas, as much as action, make a difference. Companies that put action above ideas may find that they are doing a lot of things backwards.

John R. Graham of GrahamComm is a marketing and sales consultant and business writer. He publishes a monthly e-newsletter, "No Nonsense Marketing & Sales." Contact him at johnrg31@me.com, (617) 774-9759 or johnrgraham.com.

Listening, the key to successful sales

Effective listening skills can be applied to all of our interpersonal and business relationships. We will become more effective listeners as we practice at home, in our business dealings and in our social circles. One of the greatest gifts we can give another is that of truly listening.

Listening is incompatible with being in a hurry, or with the fast-paced world around us. Such careful listening requires that we, at least for the moment, place time on slow motion and suspend our own thoughts and needs. There are no shortcuts to effective listening.

Silence makes people uncomfortable. Yet, one of the most important listening skills is not interrupting pauses or periods of silence. When a person pauses they continue to think about the challenge. When we respect these pauses by not interrupting, we are in essence offering the person a psychological chair to sit on; it is a way of saying "I am not going to abandon you."

Becoming a good listener requires avoiding premature conclusions. Our effectiveness as a listener is often lost if we solve the problem before the person we are listening to successfully draws out of themselves their hidden thoughts. When people are truly heard, they will often come to their own correct insights. The role of the listener is to help empty the reservoir of emotion, anger, stress, frustration and other feelings until the individual can see more clearly. The art of listening may require consciously fighting to keep an open mind and not judging the other person. The roles of the listener are to help, to allow the other person to open the floodgates of their feelings and beliefs and to express themselves verbally, maybe for the first time.

It is said that life is a stage and we are all actors. More than anything, we want to stand on that stage, act out our parts and speak our hearts. Becoming a good listener allows others to take the stage. When we don't listen, the actors play to an empty audience and the words from the stage ring silent and unfulfilled.

There are many ways we can signal an interest in listening and learning more. One of the most typical approaches is to simply say, "tell me more." True listening requires allowing the other person to do most of the talking. Most people are far better talkers than they are listeners. Why? Because talking is easy and natural for most of us, and few of us have ever spent the time and effort to learn how to listen. In the words of Alfred Benjamin, "Genuine listening is hard work; there is little about it that is mechanical. ... We hear with our ears, but we listen with our eyes and mind and heart and skin and guts as well."

There seems to be a growing realization about the importance of solid listening and communication skills in business. After all, lack of attention and respectful listening can be costly, leading to mistakes, poor service, misaligned goals, wasted time and lack of teamwork. The act of listening is

less important than how you listen. By listening in a way that demonstrates understanding and respect, you build rapport, which is the basic foundation from which you can sell, manage and influence others. The overall best sales performers are people who listen. They diagnose people's inclinations and the logical content of their thoughts, needs and wants. They find out precisely what it will take to solve problems, and then they act on what they've learned. You can't sell unless you understand your customers' problems.

Since most salespeople talk far too much and have never learned how to listen, here are seven concise steps to becoming a better listener. Apply these principles and watch your sales increase!

1. Give your full attention to the person who is speaking. Don't look out the window or at what else is going on in the room.

2. Make sure your mind is focused. It can be easy to let your mind wander if you think you know what the person is going to say next, but you might be wrong! If you feel your mind wandering, change the position of your body and try to concentrate on the speaker's words.

3. Let the speaker finish before you begin to talk. Speakers appreciate having the chance to say everything they want to say without being interrupted. When you interrupt, it looks like you aren't listening, even if you really are.

4. Let yourself finish listening before you begin to speak! You can't really listen if you are busy thinking about what you want say next.

5. Listen for main ideas. The main ideas are the most important points the speaker wants to get across. They may be mentioned at the start or end of a conversation and repeated a number of times. Pay special attention to statements that begin with phrases such as "My point is ... " or "The thing to remember is ..."

6. Ask questions. If you are not sure you understand what the speaker has said, just ask. It is a good idea to repeat in your own words what the speaker said so you can be sure your understanding is correct. For example, you might say, "When you said that no two zebras are alike, did you mean the stripes are different on each one?"

7. Give feedback. Sit up straight and look directly at the speaker. Now and then, nod to show that you understand. At appropriate points you may also smile, frown, laugh or be silent. These are all ways to let the speaker know that you are really listening. Remember, you listen with your face as well as your ears!

Tim Huffaker is the president of The Business Performance Group, a sales training and coaching firm headquartered in Salt Lake City. The company teaches core sales principles and skills, allowing clients to double their sales. Huffaker is the author of hundreds of sales articles and can be contacted at (801) 557-4571 or tim@bpgutah.com.



Tim Huffaker

INVESTIGATE

from page 11

The accused should be given time to respond to each of the allegations and the investigator should explain to the accused that he or she is expected to cooperate in the investigation and that there will be negative consequences for being untruthful or uncooperative.

Should the accused claim that the allegations are false, the investigator should ask why the complainant might lie or have a

motive to make false claims.

If there is a specific policy violated in the complaint, the accused should be asked if he or she is familiar with the policy and if he or she ever received any training about that policy.

The investigator should also ask the accused if there are any persons or relevant evidence or documents that support the accused's position and then follow up on those sources.

Interviewing Additional Witnesses. As mentioned above,

the investigator may want to interview one witness, or many, before confronting the accused. This strategy could minimize the risk of any interference by the accused with the investigation, such as tampering with any possible witnesses.

Witnesses are crucial in attempting to substantiate the allegations of misconduct. They can also help determine the severity of the alleged conduct. To be fair and thorough during the investigation, the investigator must interview

any witness identified by the complainant as having personal knowledge of the offending conduct. Along the same vein, the investigator must also interview any witness identified by the accused as having relevant information to support his or her position.

When considering if any other employees should be interviewed, the investigator should consider the possibility of disrupting the workplace. The possibility of disruption should be weighed against any benefit that might be

gained by involving more people in the investigation process.

Concluding the Interview.

Every interview should be concluded by asking the interviewee if he or she has told the investigator everything. This final, open-ended question can help prompt more detail or even one last thing that might be critical to a quality investigation. The question can be as simple as, "Is there anything else you would like to tell us?"

After all of the questions have been asked, the investigator should try and recount or rephrase each significant point that has come to light in the interview. This helps to clarify any misunderstandings and fill in pieces that might be missing in the investigator's record. The investigator should remind the interviewee that it is perfectly appropriate to contact the investigator if he or she has any questions or thinks of anything else he or she would like to tell the investigator about the situation.

In closing, the investigator should remind the interviewee to keep the information discussed during the interview confidential. If the accused is the one being interviewed, the investigator should remind him or her, once again, that retaliation will not be tolerated. Lastly, the investigator should remember that it is okay to re-interview anyone if additional information becomes known that is related to anything that was previously provided in one or more of the interviews.

Memorializing the Interview and Preserving the Investigation. The investigator should explain at the beginning of the interview that he or she will be taking notes. The notes that the investigator takes should be factual. Appropriate notes about an interviewee's demeanor may also be included if they are relevant to credibility. An investigator should have a note taker present to ensure that as much detail as possible is recorded. Generally, it is advised to avoid transcribing or recording interviews since a word-for-word recording is not necessary.

Along with keeping records of the interviews, throughout the investigation, an employer should document the steps that it undertook to investigate the employee's complaint. Written and signed statements from each of the interviewees would be included in these documents. Even if an interviewee states that he or she knows nothing about the relevant events, that fact should be recorded and kept in the records.

It is always best to conclude an investigation with a written summary or report. This report should be written from a neutral perspective and should include the allegations, the investigative

THEY

SAY THEY CAN GET YOU FINANCING.

WE

ACTUALLY CAN.

Unlike a traditional bank, TAB measures a business not by its balance sheet ratios and cash flow projections, but by its assets, such as its accounts receivables and inventory. Because of this, we are able to lend to businesses in any situation, and any economic climate. [For more information, visit tabbank.com/different](http://tabbank.com/different) or call 801.336.5174.



A DIFFERENT WAY TO BANK REQUIRES A DIFFERENT BANK.

steps taken, the witnesses, the standard questions asked, the witnesses' responses, and the investigators' conclusions, including any credibility determinations. The investigator should prepare a final written report presuming that the report will be discoverable in subsequent litigation or administrative actions.

Typically, it is best to separate the ultimate decision-maker from the fact-finder. Once the investigation is complete, the investigator should discuss all of the facts that he or she gathered with the person or group of people that will ultimately be making the decision or will be giving advice about appropriate action. Then, the employer will work on writing his or her final conclusions. Generally, an employer does not want to save any drafts of this document and the employer's final conclusions should be carefully written, should not speculate, and should not unjustifiably criticize the employer or other employees.

Remedial Action. In the event the investigative report leads management to conclude the accused is guilty of the allegations or has violated company policies and procedures, management should take prompt remedial action. The disciplinary action must be reasonably calculated to end the harassment. In determining

reasonableness, courts, the Tenth Circuit in particular, will look at (1) whether the conduct stopped, (2) the timeliness of the employer's response to the complaint, and (3) whether the response was proportional to the seriousness and frequency of the harassment or misconduct. The Tenth Circuit has found the following discipline to meet the reasonableness criteria (though each case turns on its own particular facts): prompt investigation of the allegations, proactive solicitation of complaints, scheduling changes and transfers, oral or written warnings to refrain from harassing or other inappropriate conduct, reprimands, and warnings that future misconduct could result in progressive discipline, including suspension and termination.

Other Potential Issues. When conducting an investigation, employers should keep a number of other issues in mind, including "Weingarten Rights" and protected concerted activity. In *NLRB v. Weingarten, Inc.*, the U.S. Supreme Court held that unionized employees have the right to request that a union representative be present in an interview that the employee reasonably believes will result in disciplinary action. An employer's failure to honor a protected employee's *Weingarten* rights can be found to have interfered with

the exercise of the employee's Section 7 rights under the National Labor Relations Act. Although *Weingarten* does not currently apply to non-union employees, it has in the past and may again in the future. Employers should also be aware that the National Labor Relations Act prohibits interrogations of employees on their protected concerted activities, subject to an exception requiring the employer to give the employee warnings regarding the employee's rights and assurances that no retaliation will occur as a result of the interrogation.

Christopher B. Snow, an attorney with the Salt Lake City law firm of Clyde Snow, represents management in federal, state and administrative employment matters. He has extensive experience in the areas of wrongful termination, reduction in workforce, Civil Rights (Title VII, Age Discrimination in Employment Act, and Americans with Disabilities Act), Fair Labor Standards Act, Family Medical Leave Act (FMLA), OSHA violations and qui tam whistleblower actions. Snow has an active real estate license and represents businesses and individuals in real estate transactions and general business litigation as well. Currently, he chairs Clyde Snow's Employment Law Practice Group and frequently writes articles for the group's newsletter, *Business as Usual*.

Let's Talk Turkey



More than five million gobblers are a good reason to give thanks for successful wildlife management programs involving sportsmen.

Help protect our natural treasures.

Safari Club International Foundation

800-377-5399

www.SafariClubFoundation.org

Mike Huckabee
WEEKDAYS 10-1pm
ONLY ON
860 AM
★ UTAH'S BIG TALKER ★
utahsbigtalker.com

• Calendar •

• Aug. 28, 7:30-9:30 a.m.: **“Uncertainty and Economic Growth: Europe and the U.S. Election,”** a Utah Technology Council CFO P2P Forum. Designed for chief financial officers, controllers and vice presidents of finance at UTC member companies. Presented by Scott Schaefer, who holds the Kendall D. Garff Chair in Business Administration at the University of Utah’s David Eccles School of Business and previously held the Richard M. Paget Chair in Business Administration at Northwestern University’s Kellogg School of Management. Location is O.co, 6350 S. 3000 E., Salt Lake City. Registration and details are at www.utahtech.org or by calling (801) 568-3500.

• Aug. 28, 8 a.m.-1 p.m.: **“Veteran Biz 2012, Is Entrepreneurship Right for Me?”** presented by the U.S. Small Business Administration. The event is designed for veterans and military members looking to start a small business. Attendees will learn about risk quotients, entrepreneurship, raising money and marketing. Location is Room 150 of the Gail Miller Conference Center at Salt Lake Community College, 9750 S. 300 W., Sandy. Free, but space is limited to the first 100 registrants. RSVP with Dennis Wengert at (801) 524-3204 or dennis.wengert@sba.gov by Aug. 20.

• Aug. 29, 11 a.m.-2 p.m.: **Business Marketplace**, presented by the Greater Sandy Chamber of Commerce. The marketplace will

feature booths with representatives from Chamber businesses and will provide networking opportunities. Location is the South Towne Exposition Center, 9575 S. State St., Sandy. Free.

• Aug. 29, 11 a.m.-noon: **“The Six Habits of Strategic Thinking That Will Transform Your Business” Webinar**, presented by Webinar Masters of North Salt Lake. Greg Davidson, a longtime consultant and president of The Nature of Strategic Thinking, will discuss the basic process of strategy development, the maxims of decision-making and the key principles of strategy execution. Cost is \$49. Details are at <http://webinar-masters.com>.

• Sept. 4, 9-10 a.m.: **“Secrets to Completing Your To-Do Lists” Webinar**, presented by Webinar Masters of North Salt Lake. Julie Edison, a consultant doing business as Modern Elixir, will discuss several time management techniques that can be applied throughout entire organizations. Cost is \$49. Details are at <http://webinar-masters.com>.

• Sept. 10, 8:30 a.m.-4:30 p.m.: **“Protecting Your Intellectual Property Rights in the U.S. and Abroad,”** presented by the U.S. Commercial Service Utah Export Assistance Center. Trade experts and intellectual property staff attorneys from the Department of Commerce’s, International Trade Administration and the U.S. Patent and Trademark Office will be in Utah conducting a one-day conference on how companies and individuals can protect and enforce

their intellectual property in the global marketplace. The program will include practical strategies for protecting and enforcing your company’s intellectual property when exporting to foreign markets, and speakers will provide advice for avoiding common pitfalls. Participants will have the chance to discuss export related questions involving patents, trade secrets, trademarks, copyrights and Internet domain names. Location is the Karen Gail Miller Conference Center at Salt Lake Community College, 9750 S. 300 W., Sandy. Cost is \$45 and includes lunch. Register with Dave Fiscus in the US&FCS Utah office at (801) 255-1873 or david.fiscus@trade.gov.

• Sept. 15, 9 a.m.-1 p.m.: **10th annual Utah Manufacturers Association Forklift Rodeo**. Companies are encouraged to enter their best forklift drivers to compete against others from throughout the state. Drivers will compete in four events, with each emphasizing safety, driving ability and accuracy on courses featuring an obstacle course, loading and unloading a trailer, stacking and shelving pallets, and a safety inspection of the equipment. Winners get \$500 for first place, \$300 for second place and \$200 for third place, and a traveling trophy will be awarded to the winning operator’s company to display for a year. Forklifts will be provided by Arnold Machinery Co., Salt Lake City. Registration begins at 8:30 a.m. Location is USANA Health Sciences, 3838 W. Parkway Blvd., Salt Lake City.

Registration is \$25 if paid by Sept. 1 and \$35 thereafter. Registration can be completed at http://www.umaweb.org/custom_forms/uma_forklift_rodeo_reg.php. Details and sponsorship and advertising opportunities are available by contacting Teresa Thomas at (801) 363-3885 or teresa@umaweb.org.

• Sept. 20, noon-1:30 p.m.: **Plant Manager Roundtable kickoff event**, presented by The Employers Council. Reserved for operating managers and directors with direct responsibility for manufacturing or plant operations. Through a special affiliation with the Utah Manufacturers Association (UMA), the roundtable also is open to plant managers from UMA member companies. Designed for plant managers to share ideas, experiences, solutions and best practices. Regular luncheon meetings will be the second Thursday of each month, from September through May (except December). Location for kickoff event is Radisson Hotel, 215 W. South Temple, Salt Lake City, with the location changing for the three plant tours that will be included in the series schedule. Cost is \$369 for entire series. Enrollment is limited to 30. Details and registration are available by contacting roundtable facilitator Monica Whalen, president and chief executive officer of The Employers Council, at (801) 364-8479 or monicaw@ecutah.org.

• Sept. 21, 7 a.m.-3 p.m.: **World Trade Association of Utah annual scholarship golf tournament**. The event raises funds for local students pursuing an education in international business. Scholarships will be

awarded based on outstanding achievement and merit. Location is Soldier Hollow Golf Course, 2002 Olympic Drive, Midway. Registration and continental breakfast begin at 7 a.m. Golfing has shotgun start at 8 a.m. Cost is \$90 per person or \$350 for a foursome, with breakfast and lunch provided. RSVP to Lisa Cox at lisa@freightlink.net or (801) 264-9130 by Sept. 11. Hole sponsorships are available by contacting Bill Waterbury at bwaterbury@freightlink.net or (801) 264-9130.

• Oct. 23, 7:15 a.m.-3 p.m.: **Seventh Annual Procurement Symposium**, presented by the Governor’s Office of Economic Development (GOED) Procurement Technical Assistance Center. Attendees will learn how to sell to the government and military. Training sessions include Hill Air Force Base opportunities, construction contract requirements, and financing a government contract. Featured speaker will be Spencer P. Eccles, GOED executive director. Keynote speaker will be Brig. Gen. H. Brent Baker Sr., commander at Hill Air Force Base. Exhibitors will include Utah military bases, federal government agencies, state and local government agencies, universities and community colleges, large defense prime contractors, financial institutions, the U.S. Small Business Administration (SBA), the Utah Supplier Development Council and more. Location is South Towne Expo Center, 9575 S. State St., Sandy. Information and registration are at business.utah.gov/PTAC.

BPG

SALES TRAINING
INCREASES
PROFITS



Proven • Guaranteed • Endorsed
GephardtApproved.com



THE BUSINESS
PERFORMANCE
GROUP, INCORPORATED

Contact Us for Your Free Sales Evaluation
bpgutah.com | 801-484-1285

Buy

local
FIRST

KEEP UTAH INDEPENDENT

SPOTLIGHT

from page 10

dance lessons since 1980, runs the dance studio classes offered at the Salomon center. "It's been good to have the dance center tied into the business so that we can cater to the eight to 16 year-old age group," says Gary. "This is an age group that lacks the muscle development and/or attention span required for the gym setting."

Gary's two sons are also involved in the business. Gary's oldest son, Casey Nielsen, is the regional manager and oversees all four locations. Dustin Nielsen, Gary's second son, manages the Salomon center.

Gary attributes the success of his business to several factors, including facility cleanliness, good customer service, highly qualified class instructors and the best workout equipment. Gary and his team have created an extremely customer-focused environment that has encouraged customer loyalty. "Some of our members were members of Deseret Gym and have been using our facilities for over 20 years," Gary explains. "It has become a way of life for them."

Vendor and banking relationships have also been an important part of Gary's success. Every time the company expanded, they purchased anywhere between \$2,000

to \$4,000 of equipment. Thus, maintaining close relationships with vendors has helped in both the purchase and maintenance of this large inventory.

"Bank of Utah has helped us finance these large purchases," Gary explains. "Bankers are where all the money is. You can't do it without a banker."

Due to the large number of Gold's Gyms located in Northern Utah, opening new facilities is an unlikely option for the company's future. However, the company's focus for the future will be to expand through increased membership. Only 13-15 percent of American's have a membership to any health center, and with obesity on the rise, Gary hopes to see membership rise to 20-25 percent.

One way Gary hopes to accomplish this goal is by increasing the number of corporate memberships. "We work with companies to try and get their employees involved in a healthy lifestyle program," Gary explains.

"It's fun to see people make changes to their lives, get in shape and overcome injuries," says Gary, "I'm a lot more conscientious of the amount of people that are overweight or obese and it's affecting our medical costs. The only way to combat those cost is to be healthier." Total Fitness, Inc. certainly provides the means to do just that.

THE Enterprise

UTAH'S BUSINESS JOURNAL

**WHY SHARE?
GET YOUR OWN COPY!**

**Call To Subscribe
801-533-0556**



Options, options, options!
SBA money to loan.

Let our team find the right **SBA loan** to fit your business needs.

- SBA 7(a)
- SBA Express-Term Loans & Lines of Credit
- SBA 504 loans
- Purchase machinery and equipment
- Finance owner occupied real estate
- Fund a business acquisition or expansion
- Augment working capital
- Many other types of business lending



Call Kent DeHart or Scott Snow at 801-478-2300, or visit a First Utah Bank office near you.
www.firstutahbank.com/sba

CREATORS.COM
©12

VIOLENCE IN AMERICA

BOKBLUSTER.COM



VIOLENCE IN AFGHANISTAN



Ryan's hope: voodoo economics still isn't a plan

By naming Paul Ryan as the Republican vice presidential nominee, Mitt Romney has endorsed what used to be known as “voodoo economics” — and restored that special brand of Republican superstition to the center of national debate.

To take Ryan seriously, as all too many pundits and politicians insist we must, requires everyone to behave as if the plans he produced as House Budget Committee chairman represent a meaningful effort to improve the nation's fiscal future. Sooner or later, however, real analysts will scrutinize the Ryan budget using honest math instead of humbug and magic.

In fact, they already have done so — and that is where the myth of Ryan as a serious, scrupulous and bold reformer begins to disintegrate.

As close observers know,

the Wisconsin congressman wants to cut taxes for the wealthiest Americans even more sharply than George W. Bush, whose tax policies caused the bulk of the deficits that provoke so much righteous anger among Republicans like Ryan today. In Ryan's budget, his tax cuts leave an enormous revenue gap, even with the absurdly destructive spending cuts he also proposes.



Joe Conason

But according to Ryan, we need not worry that his plan will increase fiscal deficits as well as the deficits it will assuredly worsen in infrastructure, education, health care, environmental quality, consumer protection and scientific research. He says that his tax cuts, which naturally favor the wealthiest Americans, will pay for themselves by creating a huge,

rapid spurt of economic growth — which will result in higher tax revenues to cover the deficit.

Where have we heard this before? There was the original Reagan version, and then later the Bush version, which relied on a gimmick called “dynamic scoring” to create the same fake equation. Ryan's version is updated slightly, claiming that if Congress removes enough loopholes and tax expenditures, the resulting spurt of growth will reach 5 percent, 10 percent or even more.

Let us turn now to the respected professionals at the Congressional Budget Office and the Center on Budget and Policy Priorities, who are too polite to simply laugh at Ryan. They took him seriously enough to examine his assertions with care, only to find that the research he cites doesn't support his assumptions — and that most economists still don't buy his theories. They also

noticed that Ryan never specifies which loopholes and expenditures he expects to end. That must be why Romney, who has offered similarly foggy plans for tax reform, feels Ryan is such a kindred spirit.

When voters hear that Ryan is a bold, responsible figure determined to reduce the fiscal overhang that threatens future generations, they should know that his budgets don't balance — at least not any time before 2040. And that's because he is pursuing the same agenda as George W. Bush did, which will produce still more ruinous exults if he succeeds.

No fear, however, because Ryan happily tells us that his tax cuts will stimulate so much economic growth so rapidly that fresh revenues will fill the gaps. Yes! Cutting taxes will actually increase tax revenues.

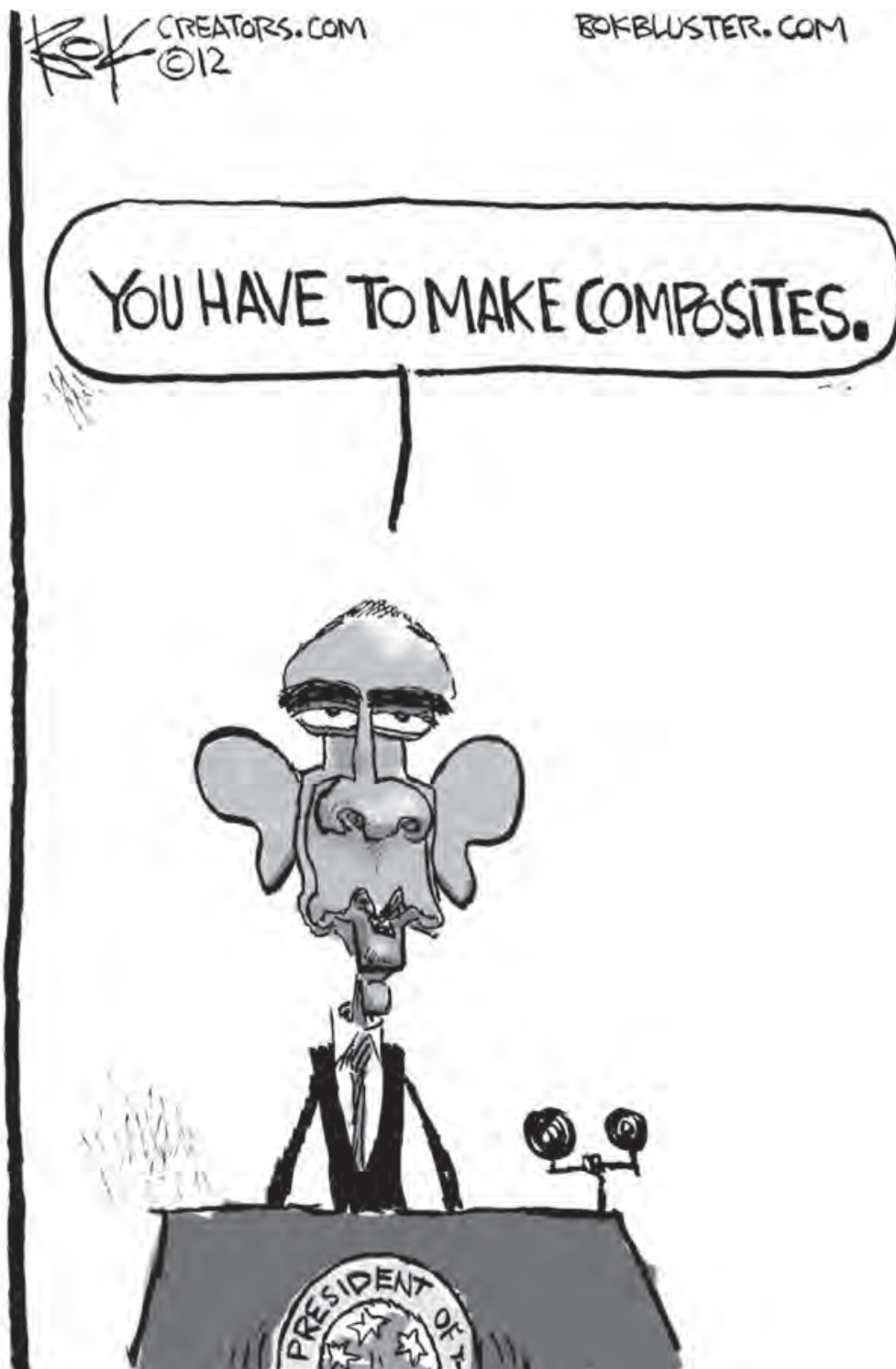
Everyone in Washington certainly knows where we heard

that before. That argument first appeared when Ronald Reagan was president, then disappeared when he was forced to raise taxes in a vain attempt to cover the vast deficits his policies spawned. The same argument reappeared in the guise of “dynamic scoring” to justify the Bush tax cuts, with consequences that continue to cripple the nation.

Voodoo economics, as the senior (and smarter) Bush so memorably termed this belief system, does not work. But Ryan evidently believes in it, because his budget depends heavily on that old voodoo to achieve balance. He claims that closing loopholes and reducing tax expenditures will cover the revenue losses.

Joe Conason is the editor in chief of NationalMemo.com.

Copyright 2012
Creators.com.



'Issues' or America?

There are some very serious issues at stake in this year's election, so many that some people may not be able to see the forest for the trees. Individual issues are the trees, but the forest is the future of America as we have known it.

The America that has flourished for more than two centuries is being quietly but steadily dismantled by the Obama administration during the process of dealing with particular issues.

For example, the merits or demerits of President Obama's recent executive order suspending legal liability for young people who are here illegally, presumably as a result of being brought here as children by their parents, can be debated pro and con. But such a debate overlooks the much more fundamental undermining of the whole American system of Constitutional government.

The separation of powers into legislative, executive and

judicial branches of government is at the heart of the Constitution of the United States — and the Constitution is at the heart of freedom for Americans.



Thomas Sowell

No President of the United States is authorized to repeal parts of legislation passed by Congress. He may veto the whole legislation, but then Congress can override his veto if they have enough votes. Nevertheless, every President takes an oath to faithfully execute the laws that have been passed and sustained — not just the ones he happens to agree with.

If laws passed by the elected representatives of the people can be simply overruled unilaterally by whoever is in the White House, then we are no longer a free people, choosing what laws we want to live under.

When a President can ignore the plain language of duly passed laws and substitute his own execu-

tive orders, then we no longer have "a government of laws, and not of men" but a President ruling by decree, like the dictator in some banana republic.

When we confine our debates to the merits or demerits of particular executive orders, we are tacitly accepting arbitrary rule. The Constitution of the United States cannot protect us unless we protect the Constitution. But, if we allow ourselves to get bogged down in the details of particular policies imposed by executive orders, and vote solely on that basis, then we have failed to protect the Constitution — and ourselves.

Whatever the merits or demerits of the No Child Left Behind Act, it is the law until Congress either repeals it or amends it. But for Barack Obama to unilaterally waive whatever provisions he doesn't like in that law undermines the fundamental nature of American government.

President Obama has likewise unilaterally repealed the legal

requirement that welfare recipients must work, by simply redefining "work" to include other things like going to classes on weight control. If we think the bipartisan welfare reform legislation from the Clinton administration should be repealed or amended, that is something for the legislative branch of government to consider.

There have been many wise warnings that freedom is seldom lost all at once. It is usually eroded away, bit by bit, until it is all gone. You may not notice a gradual erosion while it is going on, but you may eventually be shocked to discover one day that it is all gone, that we have been reduced from citizens to subjects, and the Constitution has become just a meaningless bunch of paper.

ObamaCare imposes huge costs on some institutions, while the President's arbitrary waivers exempt other institutions from having to pay those same costs. That is hardly the "equal protection of the laws," promised by the 14th Amendment.

John Stuart Mill explained the dangers in that kind of government long ago: "A government with all this mass of favours to give or to withhold, however free in name, wields a power of bribery scarcely surpassed by an avowed autocracy, rendering it master of the elections in almost any circumstances but those of rare and extraordinary public excitement."

If Obama gets reelected, he knows that he need no longer worry about what the voters think about anything he does. Never having to face them again, he can take his arbitrary rule by decree as far as he wants. He may be challenged in the courts but, if he gets just one more Supreme Court appointment, he can pick someone who will rubber stamp anything he does and give him a 5 to 4 majority.

Thomas Sowell is a senior fellow at the Hoover Institution, Stanford University, Stanford, CA 94305.

Copyright 2012
Creators.com

Only in Utah
White Rim Trail

Only from Humana
HumanaVitalitySM



Only when people feel their best can they perform their best.

You can inspire your employees to embrace and actively work toward a healthier life. Starting today.

Introducing HumanaVitality, a groundbreaking wellness program that helps boost energy, push productivity, and breathe new life into the Utah work force.

Unlike other programs, HumanaVitality is based on proven research. It rewards the healthy choices its members make. It's tailored to each member's health status and lifestyle, so it can support people better in working toward their goals – and reward them better when they achieve them. Big or small, each positive change earns Vitality Bucks[®], which can buy the things people really want.

HumanaVitality is a fun, straightforward, and engaging healthcare benefit for your company. Give your people the right resources to be healthier, and you'll see a healthier bottom line.

Start the change today. Go to [HumanaVitality.com](https://www.humanavitality.com) or call 801-256-6200 or 1-800-884-8328.

The results were compiled using Vitality's global experience. They are not a guarantee of future results for HumanaVitality. Humana Health Benefit Plans are insured by Humana Insurance Company.

GCHH6RXHH

HUMANA VitalitySM