

An Old Story In A New Time

by Kelly Addy

We are living different lives than our grandparents, no doubt about it. We have jumped out of time in many ways, we have reinvented the shape of reality, and we have become virtual presences to many people we have never met.

For thousands of years, wealth was measured by the size of herds and fields and barns, and we were connected in so many ways to the physical nature of all things that gave us a common bond with all the creatures of the earth.

Listening to an ancient reading about horses recently, for instance, I was struck by the fact that everyone who had heard that meditation since the dawn of time would understand the parallel between the horses and the spiritual truth the writer was attempting to reveal.

But I was just as impressed that I, hearing it again in late 2012, could not understand it because I don't know horses. They are big and powerful, there is not windshield or headrest, and they don't always want to do what you want them to do. That's me and horses.

I can do many things that Gary Cooper could never dream of, let alone do. But I am not connected to the earth and the stable and the crops and the seasons like he was. I can go to Europe in the time it took him to do his chores on the family ranch near Craig, Montana, but the rhythms of nature that were part of his existence are simply concepts, not the limits of my reality the way they were to him.

I signed onto one of the most deeply traditional professions in the world and went off to law school to save the world, but on the way to the job I do today, the world grew skeptical of its own need or desire to be saved. Consequences were an old fashioned notion, and they could be avoided as easily as the chicken pox my neighbor's kids had.

I could head south to avoid cold winter weather. I can deliver my own mail. I can carry a law library around with me on a laptop or tablet. I can answer any question you ask during the movie we are watching by Googling on my smart phone, without even leaving my chair.

We have become gods in our own world, or so people of the 20th Century would say if they took one look at how we live today. Imagine Thomas Jefferson launching himself into the internet, for instance. Imagine all the correspondence we would have between him and John Adams if only they had used email.

At the same time, though, we are still human beings, more like President Jefferson of Monticello than Captain Kirk of the Starship Enterprise. We are stretching our lives, or having them stretched, by the technology that comes as standard equipment at any work station today. How far can we go before our increased ability to reach outstrips our grasp?

As we watch issues surface on the listserv, this issue seems to be in the background for a lot of the conversations we are having. If we have a council meeting in three hours and the city manager hands us 'one more little thing' to be prepared for, we give a shout out to 700 municipal law experts and start getting answers almost immediately from five different time zones. I hesitate to even hazard a guess as to how many years of collective legal experience we are tapping into.

It is a marvelous ability we have at our fingertips, but are we getting as much quality as quantity in our information? Are we getting better answers or just more answers in a given time? How can we digest it all and apply it appropriately for our cities and towns? We receive globally, but we have to act locally.

Maybe that awareness is emerging across the listserv, too, because there are now occasional follow up posts putting the information we are getting into a human context. A recent post about regulating guns at the city library (something Clarence Darrow never had to address), drew a comment from a member who knew the librarian and the community, and gave us all some background about how they came to be in that position.

It didn't change the information in the initial post, but it helped us understand where the issue had come from and gave us a clue about why that ruling had been handed down. For professionals who have to sort one precedent from another, following some and distinguishing others, this is a priceless aspect of our listservs.

At the same time we can see at a glance what issues are popping up across the country, which gives uas some insight into where a local proposal – say, urban chickens – has come from. We not only learn about results, but also about the process that led to them. We find out how various alternatives play themselves out. We are not limited to reading an opinion about regulating marijuana dispensaries; we can get the briefs and talk to the litigator at the same time.

And our Water Cooler gives us a chance to get to know the people we are sharing information with, seeing that we are not the only ones to address the kinds of issues facing our city, understanding that they may have a different vantage point but the same goal of serving their neighbors, too.

Information is information, but people are still people. As we continue to manage legal responses to the more numerous challenges coming at us faster and faster, the tricky part is still to maintain the balance between

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nal damages, usually this will be insufficient to support an award of attorney's fees under 42 U.S.C. § 1988.

> Where recovery of private damages is the purpose of ... civil rights litigation, a district court, in fixing fees, is obligated to give primary consideration to the amount of damages awarded as compared to the amount sought." *Riverside v. Rivera*, 477 U.S. 561, 585 (1986) (Powell, J., concurring in judgment). Such a comparison promotes the court's "central" responsibility to "make the assessment of what is a reasonable fee under the circumstances of the case." *Blanchard v. Bergeron*, 489 U.S. 87, 96 (1989). Having considered the amount and nature of damages awarded, the court may lawfully award low fees or no fees without reciting the 12 factors bearing on reasonableness, see *Hensley*, 461 U.S., at 430, n. 3, or multiplying "the number of hours reasonably expended ... by a reasonable hourly rate," id., at 433.[7]

But Watch Out. *Farrar* leaves open the possibility that in some instances an award of nominal damages *might* support an attorney's fee award under 42 U.S.C. § 1988. Possible examples of such situations could include a successful suit for injunctive relief in which the plaintiff obtained only nominal damages or a suit for a small amount of damages, so that a one-dollar award could be characterized as a "prevailing."[8]

In addition, while courts hesitate to award punitive damages in civil rights cases against governments or public officials, they have done so in egregious cases.[9] When that happens, the proper measure of compensatory damages often fades into relative unimportance.

Notes

1. One example, among many, of what I believe to be an incorrect approach to damages calculation that gives property owners a windfall is *Superior Savings Association v. City of Cleveland*, 501 F. Supp. 1244, 1250 (N.D. Ohio 1980) (mortgage holder gets difference between value of collateral before and after demolition).
2. *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).
3. *Gilbert v. Homar*, 520 U.S. 924, 930 (1997).
4. *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983).
5. *Carey v. Piphus*, 435 U.S. 247, 260 (1978) (citations and footnotes omitted).
6. *See* text accompanying n. 5.
7. *Farrar v. Hobby*, 506 U.S. 103, at 114-15.
8. *See Boraks v. Wilson*, 383 F. Supp. 195, 197 (D.D.C. 1974), for how a court might handle a jurisdictional minimum requirement in the context of a civil rights claim for a small amount of compensatory damages. For a recent in-depth discussion of calculating damages in civil rights cases, *see generally,* Michael L. Wells, *Civil Recourse, Damages-as-redress, And Constitutional Torts*, 46 Ga. L. Rev. 1003 (2012).
9. *See Smith v. Wade*, 461 U.S. 30 (1983). ML

Code Enforcement *Cont'd from page 20*

ditions, or alterations cost prohibitive or otherwise impossible to meet.

Noting the possible difficulties in dealing with historic preservation above, the goal of code enforcement and historic preservation are the same and are positive ones for any community. They both seek compliance and the continued viability of our structures and neighborhoods through the proper maintenance and care for properties and structures. Therefore, both are important to the enhancement and sustainability of our communities. What we see as traditional code enforcement and historic preservation can, and should, work together. While some municipalities may think that historic preservation doesn't fit their community, I think every community should take a good look and truly determine if any particular area is worthy of keeping a level of historic significance to that area. While the design standards add an additional layer of compliance to code enforcement, preserving a community's history is a positive goal and could lead to other positive impacts, such as tourism or simply other owners making improvements in order to keep their property looking as good as their neighbor's.

I didn't appreciate history until I was well out of college. And, our current younger generation seems to be lost in their i-pods, i-phones, x-boxes, facebook, and twitter. While they may not appreciate it now, we should always consider preserving history for future generations. ML

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our capabilities and our capacities and to be mindful that there are still real world consequences to our actions. The books might be virtual, the messages might be instant, but the impact on our cities and ourselves as people changes things in a real way and those changes play out over time.

It is an old story being retold in a new and different context, I suppose. Paul Bunyan was replaced by the chain saw, John Henry lost out to the steam hammer, and Casey Jones pushed the locomotive a little too hard.

While more information can be helpful, it may not lead us to better results or more long-lasting solutions. While the forest is bigger, the path is no wider or straighter than it ever was. It is still people who help us find our way and it is still people that we serve. ML

Supreme Court *Cont'd from page 27*

unimproved portion of the same waterway did not constitute a discharge of pollutants under the CWA. Furthermore, the Ninth Circuit's result did not square with the definitions in the CWA itself, which defines "discharge of pollutant" to mean "any *addition* of any pollutant." The case was reversed and remanded. *Los Angeles County Flood Control District v. Natural Resources Defense Council, Inc.*, No. 11-460 (Jan. 08, 2013).

IMLA participated in an amicus brief in support of petitioner Los Angeles County Flood Control District. ML

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