President’s Message
Charlie Stevens

WOW! MIPRIMA’s Summer Conference on beautiful Mackinaw Island was jam-packed with relevant, useable information and tools to manage your risk.

Safety Management Solutions for your Auto Fleet kicked us off. If you have autos this session explained the use of dash cameras to see what the driver sees. Steve Mentzer from LYTEX, Inc. explained that the cameras have the capability of only recording when an incident occurs. Hence we learned how to get driver / union buy-in to the dash camera system. We further learned the cost savings of on-going, practical, non-threatening, auto safety management.

Fresh from the Republican National Convention we heard from Scott Breslin from Public Affairs Associates. Scott provided political insights regarding the presidential election that fired up the room proving this has already been and likely to continue to be a very polarizing election. We also discussed some state politics and likely bills to be brought up by year end. Scott believes certain elements of No Fault could happen, but pointed out the medical providers lobby is extremely strong, with a powerful voice in L. Brook Patterson and the auto insurers prefer all or nothing reform. While compromise could be accomplished on attendant care and fraud, it is unlikely that politicians will agree to any fee schedule or caps on coverage. The recent legislation on road funding was a start, but long term an incomplete package and likely insufficient as a long term solution. And of course there was discussion of the impact of the Flint water crisis and Detroit schools dilemma. Bottom line: it all comes down to MONEY!

Our third session focused on the strategic use of surveillance and cost saving technology. Robert Murray, owner of Superior Investigations, explained the use of non-manned cameras and how they are producing results for about a third of the cost of having investigators performing site surveillance. Robert explained that there is still a need for field investigators, but, the strategic use of the field investigator with non-manned cameras is very effective, especially in connection with doctor visits, court appearances. Continued use of field investigators to complete traditional investigative work is important and necessary for follow-up on information captured during the non-manned camera session.

As our training sessions ended on day one, the weather cleared and there was time for networking. Many attendees took to the oldest golf course in Michigan and played a scramble on the Wawashkamo Golf Course. A unique course, that was developed by the use of horse and plow. All returned for our President’s Reception and Dinner at the top of Mission Pointe with an awesome view of the island and waterfront.

The next day we heard from an engaging IT type . . . that’s right, I said it . . . an IT
PRIMA Chapter Service Awards

Every year the National PRIMA organization grants the Chapter Service Award to members in each chapter. The award is presented to individual members recognizing them for their leadership, commitment and outstanding service contributions to their chapter. During the 2016 Annual PRIMA conference held in Atlanta Georgia, two of MIPRIMA’s current committee chairs were recognized.

Michael Ellis, JD was recognized for his service, leadership and commitment to his local chapter. Over the past 30 years Michael has held many positions within the MIPRIMA organization, including President, and he has chaired various committees, including the Legislative and Scholarship committees. The Newsletter Chair Cheri Gelnak was recognized as well for her leadership, commitment and outstanding service to the chapter. I want to pass along a great BIG thank you to all of you who have contributed to the success of the Newsletter. Since I took on the task of Newsletter Chair over 6 years ago, I owe its success to the many contributors, by their outstanding newsworthy articles, and my formatting expert, Sharri Jackson.

Good Book

“Extreme Ownership” How US Navy Seals Lead & Win

Authors: Jocko Willink & Leif Babin

A good read with useable processes for business management, leadership & motivation
President’s Message Continued

presentation that provided insight on how IT systems can help you manage all aspects of your municipal operations from Department of Public Works – including water and sewers, to Parks and Rec. So how does your municipality track consumer services? What is the cost of your services? What is the actual cost of your facilities? Frank Fisher currently with Johnson & Anderson, but formerly with the City of Waterford, explained how Waterford has utilized an IT system called City Works. Moreover, Frank explained how City Works can be integrated with other IT systems to provide a seamless, comprehensive, logic based tool to reduce risk and know our cost.

MIPRIMA Summer Conference ended with a serious, real look at our jails. Mackinac County Sheriff, Scott Strait and former State Police Officer and Livingston County Jail Administrator, Tom Cremonte, explained the many challenges of jail operation, including perhaps the most SIGNIFICANT dilemma of how to handle people with mental health issues. Sheriff Strait explained that there are very few people who are truly bad people (Jeffrey Daimler and Charlie Manson). He explained nearly 100% of people in jail have some sort of mental health issue or substance abuse problem. These people really do not belong in jail, but for those who need medical treatment and professional help, there is a lack of resources. The state long ago closed mental hospitals, and it is difficult to transfer criminals with mental health issues to local hospitals. Another significant issue is the increasing number of female inmates. The female jail population is growing in multiples and they are being housed in jails that are often more than 50 years old and designed for male inmates. Sheriff Strait explained that if those in his jail do not get the appropriate help, they will be back and or move on to our state prisons. He explained that jails are understaffed and in need of both correction officers and community mental health professionals. Once again funding is the issue. Tom Cremonte explained that MMRMA has formed two committees (Jail and Health Services) to explore and look for options to the jail inmate and facilities issues.
Legislative Committee Update

The views set forth below are those of the Committee Chairman, Michael Ellis, and do not necessarily reflect the view of MiPRIMA, or other Legislative Committee members.

Park At Your Own Peril

_Yono v Department of Transportation – Michigan Supreme Court – (July 27, 2016)_

Does the highway exception to Governmental Immunity apply “curb to curb” and include the parking area beside the road or does it only apply to the traveled portion of the roadway? This issue has long been a problem for public risk managers handling pothole claims in parking spots. We thought this matter resolved by the Court of Appeals decision in 2012 in Yono, but now the Supreme Court has reversed Yono and this issue has truly been resolved.

On July 27, 2016 the Michigan Supreme Court published a 4 to 3 decision clarifying the highway exception to Governmental Immunity. The court held that a paved parallel parking area adjacent to M-22 in Suttons Bay did not fall within the exception to immunity. The parallel parking area was defined by painted lines and in a small bit of legal humor the court stated “This is a line-drawing case, both literally and figuratively. We are asked to decide whether a parallel-parking lane, designated exclusively as such by painted lines on the highway, is “designed for vehicular travel” within the meaning of the highway exception to the governmental tort liability act (GTLA).”

The plaintiff, Helen Yono, had been injured when she stepped in a depression (a pothole) and sued Department of Transportation (DOT). DOT defended arguing that the depression was in the area designated by painted lines for parallel parking and that although this area was paved it was not in the roadway. Previously in 2012 the Court of Appeals had heard this same case and accepted the plaintiff’s argument that cars were intended to be driven into the paved parking area to be parked and that was enough for the exception. This new Supreme Court decision reverses that prior Court of Appeals case decided for the plaintiff and now issues a decision for the defendant. The Supreme Court stated “Accordingly, we reverse the judgment of the Court of Appeals, which held otherwise, and remand this case to the Court of Claims for entry of summary disposition on behalf of defendant.”

This is a precedent setting decision. All similar pending cases may need to be reviewed in light of this decision.

Whistleblower Protection Act – Notice To Attorney Is Reporting

_Tammy McNeil-Marks v Midmichigan Medical Center-Gratiot - Michigan Court of Appeals – (June 16, 2016)_

On June 16, 2016 the Michigan Court of Appeals published an opinion in the case of Tammy McNeil-Marks v Midmichigan Medical Center-Gratiot, which seems to put a new spin on the Whistleblower Protection Act (WPA).

This case holds that an attorney being a member of the Michigan Bar Association (MBA) is a member of a “public body” and so a whistle may be blown by the plaintiff “telling” an attorney and that “telling” would then be deemed a report to a member of a public body under the WPA.

The court states “under the plain language of the WPA, specifically MCL 15.361(d)(iv), [attorney] Gay qualified as a member of a ‘public body’ for WPA purposes. As a practicing attorney and member of the MBA, Gay was a member of a body ‘created by’ state authority, which, through the regulation of our Supreme Court, is also ‘primarily funded by or through’ state authority. By holding otherwise, the trial court erred.”

This decision overturns the lower trial court by stating “The trial court decided that she did not [report], reasoning that plaintiff’s telephone conversation with [attorney] Gay was not ‘a communication to a public body’. Plaintiff argues that the trial court’s decision was erroneous because, as a licensed Michigan attorney, Gay qualifies as a member of a ‘public body’ for WPA purposes. We agree.”

Public risk managers may wish to review similar pending cases in light of this new interpretation.
(LEFT) Frank Fisher, Geospatial Service Manager, Johnson & Anderson. Presented: **Computer Tracking Systems.** Frank’s primary focus has been on the development, integration and implementation of Geographic Information System and Asset Management System for local governments.

(RIGHT) Scott Breslin, Public Affairs Associates. Presented: **Political Analysis between Conventions... In the Eye of the Storm.** Scott is the former Chief of Staff to Senator Michael D. Bishop of Oakland County. Also he has had extensive involvement as lead staff on the Michigan Venture Capital Act, the Child Protections Registry Act and the Modernization of the Credit Union Act. Scott now specializes in legislative issues relative to insurance and financial services, pharmaceutical, internet protection, and retail. Scott helped found the Michigan “Meet Us on the Trails” organization, which raises funds to support the State’s nature trails system.

(LEFT) Steve Mentzer, of Lytx, Inc. Presented: **Fleet safety and management solutions to maximize safety, prevent collisions, improve compliance and reduce expenses.** Steve helps government fleets focus their post-training efforts on prevention through coaching and reinforcement of safe driving behaviors.

(RIGHT) Robert Murray and Lynn Polulak, Superior Investigations. Presented: **Strategic Use of Surveillance.** They shared new technology for cost effective surveillance by using their new unmanned security system surveillance technology.

(BELOW) Scott Strait, Mackinac County Sheriff & Tom Cremonte Risk Control Consultant for MMRMA; retired Michigan State Police Detective Lieutenant. Presented: **Jail Challenges.**
The ‘Sign’ Of Change: The Impact Of Reed V Town Of Gilbert On Local Sign Regulation
Carol A. Rosati and Daniel A. Klemptner
Johnson, Rosati, Schultz & Joppich, P.C.

On June 18, 2015, the United States Supreme Court issued its opinion in Reed v Town of Gilbert, Arizona, ruling unanimously that the Town’s sign code violated the First Amendment of the United States Constitution.

Town of Gilbert Sign Code
The Town’s Sign Code prohibited the display of outdoor signs anywhere within the Town without a permit. Essentially, the Sign Code identified categories of signs based on the type of information conveyed on the sign, and then applied different regulations to the various categories. There were 23 categories of exemptions covering a wide range of topics, but only three of those categories were relevant to the case: Ideological (treated the most favorably by the Code), Political, and Temporary Directional Signs Relating to a Qualifying Event (treated less favorably than the ideological or political signs). The Town’s Code defined these signs as follows:

Any Ideological – Sign communicating a message or idea for noncommercial purposes that [does not fit in one of the other categories].

Political – Temporary sign designed to influence the outcome of an election called by a public body.

Temporary Directional Signs Relating to a Qualifying Event – Any temporary sign intended to direct pedestrians, motorists, and other passersby to any assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization.”

The Town’s Code restricted signage in these three categories in the following manner:

Ideological – allowed to be up to 20 square feet in area and to be placed in all zoning districts without time limits.

Political – allowed to be up to 16 square feet on residential property and up to 32 square feet on nonresidential property, undeveloped municipal property, and public rights-of-way. May be displayed up to 60 days before a primary election and up to 15 days following a general election.

Temporary Directional – may be no larger than six (6) square feet. May be placed on private property or on a public right-of-way, but no more than four (4) signs may be placed on a single property at any time. These signs may be displayed no more than 12 hours before the “qualifying event” and no more than one (1) hour afterward.

Plaintiff Pastor Clyde Reed
Meet Clyde Reed, the Pastor of the Good News Church in Gilbert Arizona. He held church services at various temporary locations around the Town as the Good News Church lacked the financial ability to own or rent a permanent facility. He and his wife placed 15 to 17 temporary signs around the Town to inform the public about the time and location of the upcoming Church services. This was the most economical way for the Church to advise its parishioners of the location of the service. The temporary signs were placed early in the day on Saturday and removed around midday on Sunday. Thus, the signs did not comply with the Sign Code limitations on display.

Government Action
The Town’s Sign Code compliance manager cited Pastor Reed twice for exceeding time limits and once for not posting the date of the “qualifying event” on the sign. The manager also confiscated one of the Church’s signs. When Pastor Reed reached out to the manager to try to work out an accommodation, the manager responded with “fire and brimstone.” The manager informed Pastor Reed that there would be “no leniency under the Code” and he “promised to punish any future violations.” Id. at 2225-2226.

Pastor Reed filed a lawsuit in the federal court alleging a violation of free speech rights under the First and Fourteenth Amendments to the U.S. Constitution.
based on the regulation of temporary directional signs. Pastor Reed requested a preliminary injunction, which was denied by the District Court. The District court opined that just because the manager had to read the sign to determine whether the sign was a Temporary Directional Sign was “not akin to an officer synthesizing the expressive conduct of the sign.” Id. at 2226. The Ninth Circuit affirmed the denial of the preliminary injunction, but remanded to the District Court to determine if the distinctions between temporary directional signs, political signs, and ideological signs were a content-based regulation of speech. On remand, the District Court granted summary judgment in favor of the Town, and the Ninth Circuit affirmed on the basis that differences in the regulations were justified by objective standards. Undeterred, Pastor Reed moved on to the United States Supreme Court. The Supreme Court reversed as explained below.

Justice Thomas Writing for The Majority of the United States Supreme Court

Before delving into the Supreme Court opinion, there are certain concepts that the Court assumes everyone understands and which assist in comprehending the meaning of Reed:

First, government has the right to protect the public health, safety and welfare.

Second, the law has long recognized that traffic, aesthetics, blight and clutter preservation, economic development, and maintenance of property values, are valid governmental interests that protect the public health, safety and welfare. The Reed opinion again acknowledged that regulation of signs was necessary, that the presence of certain signs (e.g. traffic signs) were essential to protect both vehicular and pedestrian travel, and that a regulation narrowly-tailored to the challenges of protecting the safety of pedestrians, drivers and passengers might survive strict scrutiny. Previously, in the landmark case of Metromedia, Inc. v City of San Diego; the Supreme Court had concluded that the city’s interest in avoiding visual clutter was sufficient to justify a ban on billboards.

Third, the Court had previously drawn a distinction between content-based regulations (i.e. laws that target speech based on the content) and content-neutral regulations when evaluating First Amendment claims. Regulations based on the content of the speech are subject to “strict scrutiny” and the government must prove that the regulations are narrowly-tailored to serve compelling interests. On the other hand, content-neutral regulations just have to survive “intermediate scrutiny,” meaning that the regulation promotes a substantial governmental interest, advances that interest, and is no more extensive than necessary to serve that interest.

Lastly, and importantly, government does not have the power to restrict speech based on the message, the idea expressed, the subject matter, or the content.

The Supreme Court majority (Justices Thomas authoring the opinion, with Justices Roberts, Scalia, Kennedy, Alito and Sotomayor joining) held that the Sign Code’s provisions were content-based regulations of speech that did not survive strict scrutiny. The Court reiterated that a sign regulation is facially content-based if: it makes a distinction based on the message or speech being expressed; or the regulation cannot be justified without referred to the specific content of the speech; or the regulation was adopted to target particular speech because of the government’s disagreement with its message (i.e. it is content-based in its purpose). The Court explained that such “content-based laws” are presumed to be unconstitutional. They may only be justified if the government proves that the laws are narrowly-tailored to serve compelling governmental interests. Laws that regulate speech by particular subject matter or by its function or purpose are subject to strict scrutiny. The Town’s Sign Code was infirm under the First Amendment.

The Supreme Court held that the Sign Code in this case was content-based on its face because it defined the categories of temporary directional, political, and ideological signs on the basis of their messages and then subjected each category to different restrictions. In other words, why should a temporary sign directing people to church services be treated differently and less-favorably than a temporary sign expressing a political view (“Vote for me”) or ideological view (“Support our Troops”): According to the Court, the restriction that applied to a sign depended entirely on the sign’s communicative content. Because the facial invalidity was so clear, the Code was subject to strict scrutiny. It was irrelevant that the regulations did not specifically target certain messages within each of the three different categories; the categories subject to the Court’s review differentiated between each other in how the speech was treated based on nothing more than the specific message. The Supreme Court stated felt there was no need to consider the government’s justifications or purposes for enacting the differences in the Sign Code – “an innocuous justification cannot transform a facially content-based law into one that is content-neutral.” Id. at 2228.

Nonetheless, the Supreme Court additionally reasoned that the Sign Code’s content-based restrictions could not survive strict scrutiny because the Town had not demonstrated that the differentiation between temporary directional signs and other types of signs furthered a compelling governmental interest and was narrowly-tailored to accomplish that end. In particular, the Court noted that the Town could not claim that placing strict limits on temporary directional signs was necessary to beautify the Town or
control traffic when other types of permitted signs that create the same problems could be larger in size and erected for a longer duration. Nor had the Town shown that temporary directional signs posed a greater threat to public safety than ideological or political signs. The majority opinion suggested that the Town could accomplish its interests in safety and aesthetics by enacting content-neutral code provisions that regulated such matters as size, building materials, lighting, moving parts, and portability. You should note that Reed did not involve commercial speech, which has been historically treated differently, but there were some suggestions in the opinion hinting that there may be a more protective approach to commercial speech in the future.

Justice Alito’s Concurrence

Although there are three concurring opinions in the case, the one authored by Justice Alito’s (in which Justices Kennedy Sotomayor joined), attempted to offer some practical guidelines for signs that might not be considered content-based, and thus, might survive a First Amendment challenge. The list included:

- Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.
- Rules regulating the locations in which signs may be placed. These rules may distinguish between free-standing signs and signs attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with messages that change.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.
- Rules distinguishing between the placement of signs on commercial and residential property.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.
- In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots. Id. at 2234.

What does the future hold for sign regulations?

Unfortunately, the Reed v Town of Gilbert case raises more issues than it answers. It is fair to say that in all likelihood each community’s existing sign regulations probably contain some unconstitutional provision based on the new ruling. And, although the concurring opinion offers some guidance to government, the extent to which the suggested rules might survive a First Amendment challenge is still in the air, and will depend to some extent on the particular facts in a case and the particular regulation challenged.

Here are some suggestions. First, articulate legitimate grounds in the purpose section of a sign regulation to support different treatment of signs. To the extent possible, explain why the regulations are not content-based. For example, since there is usually distinct treatment of commercial signs, give the reasons why (e.g. the locations are adjacent to major thoroughfares, higher speed limits, and heavier traffic may justify larger signs that can be viewed more readily). Location in the community may be an important basis to justify varied sign regulations if the reasons are contained within the ordinance. Review the regulations for off-premise and on-premise signs and provide a specific reason for the differences. Second, always ask and answer the question of whether the content of the speech has to be examined to determine what regulations will apply. Third, remember that anyone has a right to express protected speech on any sign – commercial or otherwise. Does your ordinance acknowledge this right and contain some statement or exemption for First Amendment speech? Fourth, we recommend that communities revisit their sign regulations immediately to ascertain if signs are treated differently based on the content of the message under the analysis employed by the Reed majority. Fourth, take a cautious approach to code enforcement (particularly for temporary off-premises signage) until your sign regulations have been revised to accommodate the Reed majority’s rigid analysis. Lastly, there are several groups, including the Public Corporation Law Section of the State Bar of Michigan, which are working on Model Sign Regulations to address the Reed holding. Keep your eyes open for future recommendations.

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3The Town’s Sign Code evolved in response to the lawsuit. The 2007 version that prompted the lawsuit defined the signs at issue as “Religious Assembly Temporary Direction Signs.” These signs were prohibited from being placed in the public right-of-way, and were only permitted to stand two hours before and one hour after the “religious assembly.” The Town amended the code twice during the case. The 2008 Amendment redefined the category as “Temporary Directional Signs Related to a Qualifying Event” and expanded the time limit to twelve hours before and one hour after the “qualifying event.” The 2011 Amendment authorized placement of these signs in the public right-of-way.

2016 Summer Conference Classroom

MIPRIMA President Charlie Stevens and wife

MIPRIMA Trustee Debra Russell and MIPRIMA Secretary Drew Dunsky

MIPRIMA Past President Paul VanDamme & wife

Lynn Polulak and husband

Kelly Suppes, Grant Mason & Tim McClorey
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