



Assistant Attorney General Cindy Poulson: unanswered questions & withheld records.

Update: The Poulson/Barlow Emails

AG Reyes withholds key records and refuses to answer questions. Transparency is the first casualty of his administration.

PART 34 OF A SERIES

by Lynn Packer
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Mark Shurtleff and John Swallow must have cursed Utah's Office of Attorney General. It took less than three months for their successor, Sean Reyes to go from promising the "highest degree of transparency in the AG's office" and "an Open Door policy" to engaging in stonewalling, an art perfected by Shurtleff and Swallow. He is not only blocking access to information about the messes they may have created—about the suspected unethical practices they left behind—but also thwarting access to information about any messes he's managing to create since taking the post in December,

Packerchronicle is the only media outlet reporting on alleged personnel and policy problems Swallow and Shurtleff left behind, examining how tax dollars are spent and how the office is being run in the midst of the AG scandal.

As an example: the ongoing saga of Cynthia Ann Poulson who was promoted from paralegal to full attorney last June only to be told she would be fired on January 1st if she did not clear a past criminal conviction off the books. (See *packerchronicle* reports 27 & 28) But she is only a small player in a bigger story about alleged cronyism and favoritism in the AG's office.

Since those reports were published two months ago the Poulson saga continues:

- Poulson has not yet cleared her criminal record but remains employed. The AG's office won't say why.
- Poulson's assistant AG salary is based on her claim to have previously worked three years as an attorney. Neither she nor the AG's office will document that claim.

- Based on *packerchronicle* reports the AG did ask state government's Department of Human Resource Management to investigate the relationship between her and her boss, Craig Barlow. That investigation is still under way.
- The AG's office took two months from the time of the request to deny providing emails between Barlow and Poulson and declines to say whether the sexually-charged, leaked emails exchanged between them are genuine or fake, as Barlow claims. ("You do have an exceedingly lovely neck-- among other parts," is a typical, purported email Barlow sent Poulson.)
- There's a new allegation that during the same time frame as the real or fake emails were exchanged between Poulson and Barlow, Poulson was also exchanging similar types of emails—using the state's email system—with another, private attorney outside the AG's office. That allegation like the other was also raised by an anonymous source. (Poulson last week says she has no comment about the other purported emails.)

Barlow, who has been a division chief, under Jan Graham, Shurtleff, Swallow and Reyes was the third most powerful figure in the AG's office. His influence may have been only somewhat less than former Deputy Attorney General Kirk Torgensen's. Torgensen remains employed by the state but as one of the targets of the criminal investigation his future in the AG's office is in limbo.

Barlow, on the other hand, is a cooperating witness in the criminal probe and his position in the AG's office appears to be secure. Reyes recently praised Barlow in a staff meeting for his leadership excellence.

After the roof caved in on Shurtleff and Swallow other "persons of interest" even others inside the AG's office came under criminal investigation. As FBI and state investigators gathered evidence they acquired confidential informants inside the AG's office, sources who provided information and records possibly damaging to Shurtleff, Swallow and possibly other assistant AGs.

So who was throwing whom under the bus? The Cliffs Notes version is this: Barlow dumped on Torgensen. He purportedly had plenty of ammo to do it. Barlow



**Torgensen, left, and Barlow:
Is one dumping on the other?**

became a cooperating witness and Torgensen became a target. Time may tell whether Torgensen was scapegoated and whether Barlow escaped closer scrutiny because he cooperated. For now the heat is on Torgensen not Barlow.

The ongoing criminal probe makes it difficult for Reyes to decide which of his division and section chiefs he can promote, leave in place or fire. He did remove Torgensen and replaced him with outsider Spencer

Austin. He did bring back Tracey Tabet who had left shortly before Reyes was appointed.

Reyes installed Tabet as chief over a newly created division. Tabet is a Barlow ally and was also a confidential informant for state and federal investigators.

Tabet's return to an advanced position and salary set tongues wagging inside the office. "Most people think that her promotion stinks," says a coworker. The new position was not posted. It appears to some employees to be the result of Barlow's ongoing influence. But legally, Reyes is free to make certain appointments without any competitive process.

The Validity of Leaked Emails Still in Doubt

More than two months have gone by with the validity of the purported, sexually provocative, leaked emails exchanged between Barlow and Poulson remaining up in the air. "By now the AG knows or should have known if the leaked emails are on the AG's email server and likely genuine, not faked as Barlow claims," spokeswoman Missy Larsen was asked more than a month ago. "Are they real or not?" She declines answering the question.

A packerchronicle request for Barlow's and Poulson's email records, records which would have weighed for or against the validity the leaked emails, was denied last week. (The AG's office argues that the law classifies personal emails sent to and from state employees as non-records thus not subject to release. That denial is under appeal.)

AG spokeswoman Missy Larsen would only say, "What happened with her and Craig, who knows? That will play itself out." But for the moment Reyes is acting as if the emails are real. Two sources say the AG's Investigations Division is trying to find out who leaked them.

Failing access to any direct evidence, such as an admission or access to originals on state servers, investigative reporters often look for indirect, circumstantial evidence that, if sufficient in scope, can outweigh direct proof. Take, for example, this model Utah jury instruction about legal evidence:

Facts may be proved by direct or circumstantial evidence. The law does not treat one type of evidence as better than the other.

Direct evidence can prove a fact by itself. It usually comes from a witness who perceived firsthand the fact in question. For example, if a witness testified he looked outside and saw it was raining, that would be direct evidence that it had rained.

Circumstantial evidence is indirect evidence. It usually comes from a witness who perceived a set of related events, but not the fact in question. However, based on that testimony someone could conclude that the fact in question had occurred. For example, if a witness testified that she looked outside and saw that the ground was wet and people were closing their umbrellas, that would be circumstantial evidence that it had rained.

The question is not whether Barlow's and Poulson's relationship or anyone else's went beyond exchanging provocative emails. The question is whether Barlow or any manager has a friendship with a subordinate employee that becomes

sufficiently personal as to cast a cloud over that employee's advancement in salary or position. It's not limited to romance. The same goes for whether a manager is a drinking buddy with a subordinate. Or whether they vacation together. Or if they worked outside the office together.

Because Barlow denies the validity of the emails, because Poulson won't comment about them, and because the AG's office won't say if it knows, then indirect proof might weigh for or against their validity. For example, has either Barlow or Poulson exchanged suspected, provocative emails with anyone else? Has Barlow helped promote any other co-worker he may have dated? Does Poulson's promotion which Barlow helped facilitate, shed any light on the authenticity of the emails?

Poulson's Advancement to Assistant Attorney General

When Barlow's Children's Justice Division decided it needed another attorney last summer it did not post the job and open it to competition. Instead it was given to a paralegal working in the division—Cindy Poulson. Her salary level was determined by the number of years she claimed to have worked previously as an attorney: three.

AG

Spokeswoman Larsen explains it this way: “What happened is when she was working as a paralegal--she had passed the bar-- and they were needing some help on some things, they looked at her and said, ‘Well you're doing so well, we love working with you, let's help you out and we'll use you on some of those things.’ Larsen says Poulson started to take some CLE (continuing legal education) courses “and get back on track.”

Larsen was also asked what proof there is that Poulson had three years experience working as an attorney prior to joining AG's office. Larsen provided a detailed answer:

Poulson was admitted to the Bar in 1991. Poulson has actively practiced law for three (3) years since her admission to the Bar. According to Office policy, Poulson is considered to have a 2010 Bar admission date.

Provision from Poulson's July 31, 2013 contract. The purported 3 years experience and resulting 2010 Bar admission date determine her pay level.

In 1991 she graduated from law school. She passed the bar. She worked for about three years in some private practice on some cases. When I talked to her she said, ‘There was one of those that I was an attorney on but I was not the lead attorney.’ And I've asked her to give me the cases. Then she goes through this down time that she admits was a spiral.

Larsen never provided the names of the cases. Neither did she provide requested information about exact time-frames, office locations, a business license and other information that could have verified Paulson's claim to have worked as an attorney. But Larsen said she did think Poulson had worked through that matter “with some internal people.” Poulson also declined to provide that detail. She would only tell *packerchronicle* that she provided documentation to people in her office.

Larsen's claim that Poulson worked as private counsel right out of law school, prior to descending in a downward spiral of drug abuse, is contradicted by an

affidavit Poulson filed with Utah's federal bankruptcy court. Some of her job history appears in those court filings when she sought bankruptcy protection in 1999, 2002 and again in 2005.

Poulson—then going by her maiden name Stonebraker—wanted to have her debt discharged, most of it about \$46,000 in student loans. Student loan debt is normally not dischargeable through bankruptcy. That added to her legal challenge. (She had bad luck picking legal counsel. The first quit without finishing her case. The second was eventually disbarred and the third was later convicted on a federal offense of misapplying bank funds.)

The 1999 case was initially botched, she says by her attorney, and dismissed. A new bankruptcy petition was filed in 2000, reopened in 2002 and concluded in 2006 after a 2005 adversary proceeding led to an out-of-court settlement.

When the 2000 case was reopened in 2002 she provided a sworn affidavit. That document said she graduated from law school in 1990, not the 1991 date cited in her contract with the state. There is no mention in the affidavit about going to work as a private attorney during the first three years after law school. Instead she wrote:

...subsequent to her graduation affiant became involved with drugs and was arrested, prosecuted and convicted of a drug felony. That after serving her sentence, affiant was able to maintain a law license but because of the conviction has been unable to find employment as a lawyer or paralegal. That affiant has attempted to obtain employment with private, state and non-profit legal entities but is always refused after her conviction is disclosed.

The bankruptcy case languished for another three years as Poulson's financial lot improved a little. She found work as an administrative assistant for the Evanston Wyoming Applied Technology Center. But the U.S. Treasury Department began attaching her federal income tax refunds and sending the money to the Department of Education as payment on her student loan interest. She filed an adversary proceeding against the U.S. Department of Education which said, "Since filing the Chapter 7 petition and receiving a discharge the Debtor has experienced several physical and mental conditions which has limited her ability to find gainful employment in the field in which she was trained under her student loans."

In her affidavit of hardship filed in 2005 she attested that she was a widow and sole caregiver for her five-year old daughter. And that her income didn't cover living expenses much less payment on her student loan debt. The case was dismissed

in 2006 after a settlement was reached. Later in 2006 she joined the AG's office.

As the Department of Human Resource Management probe of the leaked emails continues there's been another allegation surface about Poulson sending and



Cindy Poulson at a 2010 Mark Shurtleff press conference announcing internet child pornographer prosecutions.

receiving sexually provocative emails via the state's email system. Like the leaked emails that are under investigation, the new allegation comes from an anonymous source.

Those purported communications did not occur between Poulson and another attorney inside the AG's office but with an attorney in private practice on the outside. If true it's likely those emails would also have been stored on state servers. But, as with the leaked emails, the AG's office claims such personal messages are not official state records, even if they are on state hard drives, and not subject to disclosure to the press and public.

Poulson would neither confirm nor deny the new accusation. *Packerchronicle* asked if it's true she developed a relationship with an attorney outside the office, used state email for some of the contact, and set up meetings that occurred during business hours. She replied, "No comment."

No response was sought from the AG because Reyes has decided his office will no longer field questions from *packerchronicle*. On Feb. 20 Larsen emailed saying that "your personal distrust of many within the AG's office is tainting your perspective." "Because of that, I do not wish to continue to spend my own or attorney time on the questions."

During a staff meeting Larsen also told AG employees they should not talk to the press despite the AG employee handbook which says they may.

Nevertheless *packerchronicle* has spoken with numerous AG employees many of whom are happy with the progress Reyes is making to clean up any problems left by Shurtleff and Swallow. A few, however, are not pleased. "Morale in our division right now is seriously worse than when Swallow was in office," one said. "Reyes and Tarbet have been making it known that Craig is a great division chief and basically telegraphing that Craig is here to stay."

Craig Barlow and Tracey Tabet

Among Reyes' first major appointments was to name Tracey Tabet, the AG's former administrator of the Children's Justice Center program, to a newly created, higher position: Director of the Community Justice and Outreach Division.

Tabet had begun her career with the AG's office 20 years ago, in 1994, as deputy chief of staff to then Attorney General Jan Graham, often acting a spokesperson. Unlike some on Graham's administrative staff she made the transition in 2000 from a Democratic to Republican administration.

Tabet is known as an ally of Craig Barlow and, like Barlow, is among those inside the AG's office who provided information to criminal investigators.

Tabet had actually quit her Children Justice



Tracey Tabet, Chief of the AG's new Community Justice and Outreach Division

Center post where she grossed \$113,000 a year, just before Reyes was appointed, taking a job with Salt Lake County. But when she quickly returned with a promotion and division chief title it touched off murmuring among Barlow detractors.

The job was not posted. While Reyes is free to make political appointment to non-merit positions, some in the office think that all key posts should be open to competition whether the law requires it or not. Moreover, she is the only non-attorney division chief.

Tabet was once Barlow's girl friend. Some co-workers attribute her advancements to that fact. Tabet disagrees and points to her extensive service in the AG's office and her educational background. She's a graduate of the University of Utah and Westminster College, with a master's degree in communication and degrees in public relations and sociology.

Tabet resents any notion she has been advantaged by her friendship with Barlow and denies rumors that it was more than friendship. She declined an interview but responded to an email query asking about any personal relationship with Barlow:

Almost 18 years ago, in 1997, he and I dated for a few months. We were both single at the time and worked in completely different divisions, and we have had absolutely no romantic involvement since. Anything you may have heard to the contrary is patently false and libelous.

Barlow declined comment.

At the time the two were dating Barlow was 48 and Tabet 27. One staffer who knew about the Tabet/Barlow relationship said when Barlow learned Tabet was going to get breast implants to add to her "her already fulsome figure" that Barlow said it would be "like putting butter on chocolate cake."

While rumors that circulate the office about suspected cronyism in favor of Tabet may be false, the new AG's Internal Transition Team raised the favoritism allegation officially. It appears in a leaked internal memo prepared by a transition team that is recommending personnel and policy changes to Reyes:

A new Division was created with a non-attorney in charge with only six members (the typical size of a Section). Where did the money come from to fund this position?

Connected individuals, especially non-attorneys, should not be rewarded with division chief assignments overseeing four-person divisions.

It is a less-than-thinly veiled reference to Tabet and her connection to Barlow. The AG's web site has yet to show Tabet as one of the division chiefs. (It does show the other three major Reyes appointments: Brian Tarbet – Chief Civil Deputy, Spencer Austin – Chief Criminal Deputy, and Parker Douglas – Chief of Staff/General Counsel.

One assistant attorney general says Tabet's rehiring will turn out to be a public relations disaster within the office. "We knew that she has been an overpaid, non-attorney for 20 years," The attorney said. Reyes' biggest mistake so far, the source said, is that he should not have hired anyone until he knew what was going on.



Davis County Attorney Troy Rawlings

Besides being a witness for his ongoing criminal investigation Tabet has another link to Davis County Attorney Troy Rawlings who, with Salt Lake District Attorney Sim Gill is heading the AG criminal probe. In June 2010 Rawlings was awarded the National Children's Alliance Bud Cramer Award in Washington, D.C. He was nominated for that distinction by Craig Barlow and Tracey Tabet. The award cited his work to protect child crime victims. Rawlings was one of the key players in getting Shelby's Law passed. That law, named after Shelby Andrews, provides for the death penalty for the intentional murder of a child. (Ironically in 2008 Mark Shurtleff awarded Rawlings with Shurtleff's first Attorney General's Children's Justice Award. And Rawlings now, in 2014, will likely be bringing criminal charges against Shurtleff.)

Craig Barlow and Leanne Webster

In about 2000, as the AG's office was transitioning from the Jan Graham to the Mark Shurtleff administration, University of Utah student Leanne Webster was law clerking for the AG's office. An assistant attorney general told *packerchronicle* he was surprised to see a law clerk at a staff Christmas party at Barlow's house. "I had seen her at work and saw her at Craig's house," the attorney said. "She did not make any bones about living with him at the house." "She said, 'Now Craig is my boyfriend, which I thought was weird.'"

Webster, who was 26 at the time while Barlow was 51, went on to get her law degree, worked for a while for a Salt Lake law firm, and then left the state. She declined an interview about the relationship. But she sent an email from Afghanistan where she is a Foreign Service officer for the U.S. Agency for International Development:

I don't have any comment other than I know Craig Barlow to be a talented attorney and an honest, ethical man.

Barlow declined comment about Webster.

Meanwhile Barlow has an additional, new secretary. Leslie Mascaro, who had been an "executive administrative assistant" working for Kirk Torgensen before he fell from grace. Cynics in the office believe the post was created in order to move her employment status from at-will, wherein she could be fired without cause, to a career/merit position wherein termination is more difficult and jobs more secure.

An anonymous emailer identified only as "very concerned" wrote that the position did not previously exist. "It is being created to give Kirk Torgensen's secretary, Leslie Mascaro, who is currently appointed a full-time merit position," the emailer wrote. "Barlow created a lead secretary position so Mascaro would earn a higher salary than an ordinary secretary at the AG's office, making her a merit

employee at the same time.” (Mascaro was previously making \$80,698 a year according to a *Salt Lake Tribune* website.)

The email said Barlow’s current lead secretary works at the AG’s Heber Wells Building while Mascaro would work with Barlow at the AG’s Murray office building, usually referred to as the “College Drive” location, named for the street where it is located. “It all stems for the good ol’ boy system...and is still going on because the division chiefs and executive office team are conspiring together,” the email says.

Indeed the leaked internal memo prepared by Reyes’ transition team reflects the same concern. “Transparency is needed during selection and promotion process,” it says. “How is executive insuring the process is unbiased, that candidates are not preselected, and that the process is truly confidential and fair to encourage employees to apply without fear of retaliation?”

Craig Barlow and Spencer Austin

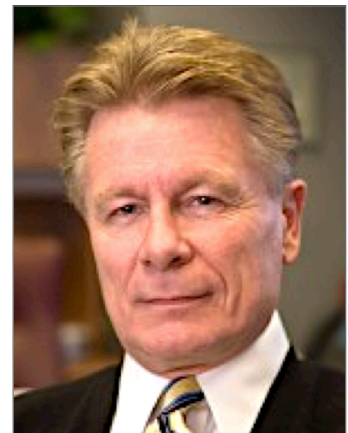
“New Utah attorney general shakes up leadership team,” read the *Deseret News* headline on January 10 this year. “Newly appointed Utah Attorney General Sean Reyes shook up the top leadership in his office as part of an effort to change its culture and restore public trust,” the *D News* reported.

Sean Reyes appointed his former law partner Spencer Austin to replace the embattled Kirk Torgensen as his chief criminal deputy. Both Reyes and Austin had worked at the highly regarded Parsons Behle & Latimer law firm. Before that, between 1975 and 1979, Austin was a deputy Salt Lake County attorney in the Career Criminal Prosecution Unit that specialized in prosecuting high profile cases, according to his bio. Between about 2004 and 2008 Reyes worked on a team Austin headed. Later Austin would publicly endorse Reyes in his failed attempt to beat John Swallow for attorney general.

Before the AG’s office declined responding to any more questions from *packerchronicle* spokeswoman Missy Larsen said Austin was dealing with personnel issues at the College Drive location, among them the Barlow/Poulson leaked emails that Austin’s Investigation Division and the governor’s Human Resource Management Department are investigating.

It turns out that Barlow, years ago, unsuccessfully tried to help bail Austin out of a legal predicament. The matter goes back to the mid 70’s when Austin was a county prosecutor, his prosecution of a Salt Lake woman for drug possession and whether he knowingly used false testimony during her trial.

Willie Mae Walker owned and operated Dell’s Café on Salt Lake’s West 2nd South in Salt Lake. In 1976 police raided the café and the apartment on the second floor. Walker was detained in her restaurant while three bedrooms, one of them she used for an office, were searched. Narcotics agents confiscated 56 balloons of heroin valued at \$1,680. Tenant Robert Westley was found upstairs at the time of the raid, searched and arrested after police found heroin on him.



Chief Criminal Deputy Spencer Austin

One of the three bedrooms was locked. Police broke down the door, entered, found a prescription bottle containing heroin on a nightstand along with assorted furs, jewelry, women's clothing, a cash box and business receipts. After the search Walker was arrested, and charged with possession with intent to distribute, based on evidence found in the room that it was her room.

Walker's defense at trial was grounded upon the premise that Westley had use and control of the room in question, according to a court record. Walker argued that "Westley was using the room as his residence prior to and at the time of the search." "In support of this contention (Walker) testified Westley had clothing and toiletry articles in the room at the time of the search," according to the record.

To counter her claim prosecuting attorney Austin elicited testimony from two of the officers who participated in the search. They said no men's clothing or toiletries were found in the room. Then in his closing argument Austin told the jury that a sheriff's deputy made a further search of the room and asked the jury, "What did he testify that he found?" "Women's clothing. He testified that he found perfume, jewelry and different types of women's clothing. I would submit to you that that's possession of that particular heroin. Who else was using that room?"

With that proof that the room was Walker's and the heroin belonged to her she was convicted.

"However, after the trial and appeal, (Walker) became aware of evidence known by the prosecution, which supported her contention that Westley had access to and actually occupied the room in question," the Utah Supreme Court wrote in a 1981 decision overturning Walker's conviction.

Walker's attorney had appealed to the Supreme Court naming Spencer Austin as a defendant. His attorney for the appeal: Assistant Attorney General Craig Barlow.

It turns out that officers knew from a witness that Westley slept in that room and had kept clothing there. That information was supposed to have been provided defense counsel and was not. And statements to the contrary should not have been used in Austin's closing argument. The Supreme Court opinion hammers Spencer for his unethical conduct:

Whether or not the prosecution was aware of the fact this testimony was incorrect at the time it was given, he was later made expressly aware of that fact during the course of the trial. Yet, the prosecuting attorney failed to disclose the contradicting testimony to the plaintiff or the court, and instead deliberately relied on the false impression created by the original testimony in both his closing argument and summation to the jury. It is an accepted premise in American jurisprudence that any conviction obtained by the knowing use of false testimony is fundamentally unfair and totally incompatible with "rudimentary demands of justice."

The high court opined that "the false impression which the prosecution knowingly fostered in the present case constitutes prosecutorial misconduct which seriously interfered with the trial court's truth seeking function."

Barlow's defense of Austin's conduct was not persuasive. So the judgment of the trial court was reversed.

Now, years later, Austin is Barlow's boss and is charged with reviewing the ethics of Barlow's conduct

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Update: March 12, 2014

After the above story was published Attorney General Reyes' transparency policy remains stuck in reverse gear. His media spokeswoman, Missy Larsen, today issued a stern reminder to all staff members:

Please contact me or direct all media communications to me before talking to any media, those who represent themselves as media, or those who might be intermediaries for media as directed by the current Press Policy found in the Administrative Policy Manual.

.....

We are currently assessing the Press Policy and will update you in the near future.

That's not exactly all the current Administrative Policy Manual says. An excerpt:

The Office is supported by and accountable to the public. One of its official duties is to provide information to the public concerning the legal matters entrusted to the Office. As such employees must be open candid and helpful to media representatives on issues that impact state government and Utah residents.

The policy does say employees must coordinate responses with the Director of Communications before responding. But *packerchronicle* has sought for information from several AG employees without responses from either them or the communications director/spokeswoman.

Even while facts were being gathered for the above story Larsen sent *packerchronicle* an email:

March 6, 2014

Lynn,

I just spoke to Cindy Poulson about your call today. Please do not contact her directly in the future. She is not authorized to speak about personnel issues for the AG's office.

Missy Larsen

Larsen's May 12 admonition was sent to employees the same day the legislature released the final report on its Swallow investigation. That report praised AG employees:

Over a period of months, many courageous current and former employees of the Office affirmatively sought out the Committee's investigators...to share their deep anger and frustration about what occurred during Mr. Swallow's tenure.

.....

These loyal public servants had known for years that what was happening in the Office was wrong, yet felt powerless to stop the wrongdoing because it came directly from the top.

They were courageous because they feared retribution. It's unlikely any of them sought permission from the attorney general or his director of communication before providing the information. Today many courageous current employees continue to talk to the press without going through the communications director where they fear their information would be lost in a black hole or, worse, they would be retaliated against.

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For comments or corrections of errors please contact Lynn Packer at 801 397 2380- or lpacker@comcast.net.