



## PACKERCHRONICLE 2

# John Swallow and the Fat-burning Pills

By Lynn Packer

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It does not take a seer stone to determine when Utah Attorney General John Edward Swallow first became entangled in Utah's web of get-rich-quick schemes and began networking with promoters who rely on weak laws and lax enforcement. Fast-buck entrepreneurs need people in high places to

protect, even advance their penny stock, telemarketing, multilevel marketing (MLM), door-to-door and dietary supplement ventures.

Fresh out of Brigham Young University Law School in 1990 Swallow, 50, joined Salt Lake's Scalley & Reading law firm. One of the firm's new clients was an upstart Utah County venture bringing its first supplement, Thermadrene, to market. Out of the gate Basic Research, LLC, founded by two Utah County property developers, George Evan Bybee and Dennis Gay, was suing and being sued over product formulations.

A variety of so-called fat-burning products ensued as did ongoing fights with the Food and Drug Administration (FDA) that continue to this day. Over claims, like this, for example:

**Eat All You Want And Still Lose Weight.  
We Couldn't Say It On TV If It Wasn't True.**

No sooner had Basic Research launched its new products in 1992 than another relatively new Utah supplement company, ShapeRite Concepts LTD, sued, claiming Basic Research had stolen its formula. Ephedra, now banned by the FDA, was a key ingredient in the formulas. ShapeRite, sold via multilevel marketing, was founded by Carl Martin and His son, Greg, after the elder Martin had served a prison term for a penny stock swindle where investors were led to believe he could mine gold from beach sand in Costa Rica.

It was the beginning of John Swallow's connection to the dietary supplement industry and his friendship with George Evan Bybee.

J. Bruce Reading and John



Swallow represented Bybee and Gay against ShapeRite. A ShapeRite attorney said Reading and Swallow were always together in court with Swallow “like a little kid tagging along.” Swallow was, after all, a junior associate. “Very nice, pleasant and professional,” said the opposing counselor.

The diet pill case settled in 1994 with a raft of agreements. If anyone won it was Basic Research, not ShapeRite. No matter. Both companies quickly escalated sales into the multimillions of dollars. ShapeRite eventually merged with 4Life Research Ltd. Of Sandy, Utah, which went worldwide and now has product sales in more than 50 countries made by several hundred thousand distributors.

That same year Utah Senator Orrin Hatch with the backing of Utah’s Natural Product Alliance, successfully sponsored the federal Dietary Supplement Health and Education Act. Utah became the hotbed of herbal supplement companies, most of the MLMs. With ties going back to pioneer days’ Mormon Tea brewed from an Ephedra species plant native to Utah’s Moab area. The Utah industry was soon generating more than \$1 billion in sales resulting in big tax revenues for the state, big tithing revenues for the LDS Church (most Utah herbal medicine/fruit juice MLM’ers are devout Mormon) and big campaign contributions to keep laws lax and enforcement down. (The web site dietpillswatdchdog says “Utah has not been described as the ‘Diet Pill Scam Capital of the USA for nothing’ with “a list a mile long of dodgy companies, FTC rulings and disappointed customers.”)

In about 1993 as Basic Research began generating millions of dollars in sales it formed a relationship with Floridian Mitchell K. Friedlander. Friedlander became a consultant to Basic Research working hand-in-hand with Bybee and Gay but was never a partner or employee.

Perhaps it was because Friedlander was a convicted criminal who had been banned from pushing his weight loss pills, hair restoration products and breast-enlargement creams in Florida. The Fort Lauderdale *Sun Sentinel* called him a “Huckster Without Hope” and “miracle cure magnate” after losing his multi-million dollar dietary supplement mail order business under a barrage of attacks by the FDA, FDA, U.S. Postal Service and the Fort Lauderdale Police fraud division.

In 1988 Friedlander pled no contest to 13 felony charges of operating a scheme to defraud. After that he continued selling pills and miracle creams in Washington DC and Nevada until he landed in Utah with Basic Research, in a state that is a safe haven for nutritional supplement promoters.

Bybee and Gay were introduced to herbal remedies by Brigham Young University graduate Daniel B. Mowrey who they allowed to rent office space at their real estate business. Mowrey had a Ph.D in experimental psychology but branched out into experimental analysis of drugs and human behavior and “psychoactive and medicinal plants.” He learned that the combination of caffeine, ephedrine and aspirin (ECA) was effective as a weight loss agent. That formula became the recipe for Basic Research’s first product.

“Shortly after old Basic Research, LLC's sales of this product began, Dr. Mowrey received a telephone call from Respondent Friedlander, who indicated that he owned a patent on the ECA a weight loss compound, and that old Basic Research, LLC's sales of its ECA product infringed upon his patent,” Morey wrote. “Rather than advising old Basic Research, LLC to change its formula to use salicin instead of aspirin (as others in the industry had done), Dr. Mowrey advised old Basic Research, LLC, that it should try to negotiate a license agreement with Mr. Friedlander, so that old Basic Research, LLC could continue to sell its ECA product.”

That was the markup of the company sued by ShopRite, the one Swallow first knew, the one with two founders, Gay and Bybee, and two non-employed partners, Mowrey and Fiedlander. A 2004 *New Yorker Magazine* article said that Basic Research's Dennis Gay called Friedlander a "marketing genius" and labeled Friedlander as Gay's most trusted adviser. Gay told the *New Yorker* he hired a private detective "to check Mitch out" and was comfortable with the report. Friedlander was also one of the defendants in the 1992 ShapeRite lawsuit.)

Swallow handled a lot of bankruptcy cases among other litigation like the Basic Research case during his six-year stint with Scally & Reading. While at the law firm he was elected to the Utah State House of Representatives where he served until 2002 when he ran unsuccessfully against Jim Matheson in Utah's 2<sup>nd</sup> congressional district.

In 1998 he left the firm and went with Basic Research full time, joining subsidiary Silver Sage as corporate counsel. There he took up the banner against the federal government, fighting to keep ephedra which had become a key ingredient in the company's weight loss pills. The combination of ephedra and caffeine proved to be powerful weight-loss drugs sold by Basic Research and many competitors.

Swallow represented Basic Research, headquartered in Provo before moving to Salt Lake, with the Ephedra Committee of American Herbal Products Association. In September, 2000, Swallow represented SilverSage at the Second Dietary Supplement symposium in Maryland. There he spoke as an attorney and member of the Utah House of Representatives in defense of Ephedra. He began his speech by telling the story of when he worked on his father's farm near Ely Nevada:

**When growing up we could not keep out calves from breaking through the fence to get hay. We used razor wire and the calves were injured getting the hay. But we finally put the hay on a platform above the heads of the calves in their own pens and none were injured.**

He said the FDA was trying to impose unsupported restrictions on Ephedra which is like putting razor wire around the fence. "We are only denying consumers an effective way to manage their weight," he told the symposium. "Ephedra is safe, but does it really work? Yes it works!"

During the 1998-2002 time frame Swallow was Basic Research's general counsel the industry was able to keep any ephedra ban at bay.

After Swallow moved on to On International (See *City Weekly* 25 July, 2013) the FDA banned ephedra after a rash of related illnesses and deaths. In 2005 a Utah federal judge upheld a challenge to the ban. But the next year the Tenth Circuit Court of Appeals overturned the ruling, upheld the FDA ban and the sale of ephedra-containing dietary supplements remains illegal in the United States. Basic Research marched on with ephedra free fat-burning pills.

In 2006 the Federal Trade Commission fined Basic Research \$3 million for making questionable weight-loss and fat-loss claims for skin gels and diet supplements. Two of the multiple products on the list contained ephedra, since banned. One of the pills, PediLean, was marketed to help overweight children lose weight. Basic Research had unsuccessfully attempted to defend the ads by listing the names and credentials of those who worked on them: Dan Mowrey, Ph.D reviewed ads, Mitch Friedlander wrote ad copy and John Swallow reviewed ad copy.

In 2004, as Swallow was a candidate for Utah's 2<sup>nd</sup> Congressional District the US house, *The Salt Lake Tribune* reported on one of the FDA's actions:

**As an attorney for a major Utah dietary supplement firm, congressional candidate John Swallow approved advertisements for several products that federal regulators say were misleading or deceptive, according to a legal filing by the company. The Federal Trade Commission has alleged that ads for six products manufactured or marketed by Basic Research and its subsidiaries were false or unsubstantiated, including a cream that "dissolves surface body fat wherever applied." In a filing with the FTC, the company states that Swallow "reviewed ad copy" for the products in question. Swallow said the filing must be a mistake, because in three years as the company's general counsel he primarily handled contract and human resource matters. "If they had me reviewing the ads, they would've been nuts because I don't know a thing about that FTC stuff," he said.**

Two years earlier, however, when he spoke at the Maryland conference he was not there to talk about human resource matters. But to defend ephedra. Swallow cited several ephedra studies and provided legal advice about complying with labeling regulations.

Which has to do with "FDA stuff."

Swallow told his audience that government overregulation is like razor wire to farm animals. "It will hurt an obese population because it will deny access to the one dietary supplement that really will work for them."

Since its inception Basic Research continued doing battle with the FDA and was suing and being sued by various parties including defending against a nationwide class action lawsuit still ongoing in Utah federal court. As general counsel Swallow would coordinate the use of outside law firms who played both offense and defense for Basic Research and its underling companies.

After leaving Basic Research as general counsel in about 2001 Swallow continued doing some legal work for the Basic Research and for Bybee as Bybee disengaged from day-to-day management for reasons Bybee and Gay decline explaining. For four years, between 2002 and 2006, Swallow's primary job was raising money for On International, Inc. (See *City Weekly*, July 25, 2013.)

Swallow registered as a lobbyist for Bybee, personally, and for several of Bybee's companies after Bybee ended daily work at Basic Research: Armored Coatings, Mirage Products, Xyelexin and Winterfox. His role as a lobbyist continued well after he was appointed a chief deputy in the Attorney General's Office. But he told *The Salt Lake Tribune* that he actually did very little lobbying for any of his legal clients, but listed them as lobbyist clients as a precaution. He told *City Weekly* through a friend that listing himself as a lobbyist "was to make sure that disclosure was made regarding companies he had been involved with. It would be akin to obtaining a fishing license but never going fishing."

Bybee, of course, was an ardent Swallow campaign supporter. Too much so. In November 2007 the Federal Election Commission (FEC) levels \$46,750 in fines for illegal contributions to the Swallow for Congress campaign. "The Commission found reason to believe the Swallow committee violated the Act by accepting excessive contributions and failing to disclose itemized contributions adequately on FEC reports," the FEC Said. "The committee accepted contributions from three partnerships, WinterHawk Enterprises LLC, Winterfox LLC and BMF #1, Ltd., that were attributed to individual members of each partnership." All were Bybee entities used to disguise the source of the campaign funds.

## George Evan Bybee

*Swallow's Chief Business and Political Ally*



George Evan Bybee

George Evan Bybee, 66, and John Edward Swallow share some common Nevada roots. Both spent a part of their childhoods near Ely Nevada. Swallow's stepfather was a farmer. Bybee's was a skimmer at Kennecott's McGill, Nevada smelter. According to LDS Church records a George Evan Bybee served in the Chile mission from late 1965 to early 1968.

Bybee once told a reporter he served as a tanker and military policeman in the Nevada National Guard for nearly a decade. In a rare interview he told *Business Xcelerator Magazine* he was a "qualified oil drilling engineer." The article said at the time Bybee co-founded Basic Research LLC with Dennis Gay he was living in Provo, doing real estate deals

In 1992, near the time he was co-founding Basic Research LLC he and Gay were being sued in Utah's fourth District Court for alleged skimming in connection with a car wash they were

running.

Provo attorney Darwin Fisher and his wife Cheryl sold Class Act Carwash on North University Parkway in Provo to a couple who eventually defaulted on their SBA loan. Bybee and Gay, operating under the umbrella of Summerhawk, Inc. and entity they called Citioi, took over payments and ran the car wash while the Fishers were regaining possession. During the transition time the Fisher's alleged Bybee and Gay took receipts that were supposed to have gone to the Fishers failed to make loan and lease payments and lied to them about those payments.

Despite the court finding in favor of the Fishers Bybee and Gay refused to pay the judgment. The judgment remained on the books until 2008 when Fisher said Bybee needed to clear the record because of some deal he was doing in Mexico or South America. John Swallow was the attorney who handled the matter.

After raking in millions hawking diet pills and miracle creams at Basic Research Bybee disengaged and turned to other ventures creating a succession of companies to pursue them. Bybee fancied himself as inventor. He participated in four patents all having to do with coatings. One of them was for coating ammunition—like bullets-- to protect them from contamination. He formed Mirage Products to manufacture and sell a coating called Xylexin, purportedly better than readily available conventional epoxy paint.

In his interview with *Business Xcelerator* Bybee said his company had coated the siding of about 400 homes between Utah and southern California.

"...we get a better adhesion, better elasticity, and better sturdiness according to what we want for what application. We have also appended the friction capability that uses a nano size atom sufficient to get a better coefficient of frictions and still keep up the similar lucidity of the transparent product.



Bybee told the magazine one of his biggest clients was Cheesecake Factory where they coated their tables and planned to move on to doing their floors, bathroom and kitchens. He said the Church of Jesus Christ of Latter-day Saints was another big client. He described plans to do cultural halls (gym) floors and to recoat the Mount Timpanogas LDS Temple.

John Walter Horne, a painter by profession, whose name appears alongside Bybee's on their coating patent, said they had their product manufactured in Missouri. He said it went on in one coat rather than the usual two. He said their product was warranted for thirty years. But it was expensive (about \$400 a gallon) and, he told *City Weekly*, most people during the building boom didn't plan to say in their homes for thirty years.

Horne said they did part of the Mount Timpanogas Temple parking lot and bid on recoating the temple's tower. But, he said, they did not win the bid.

"I walked away two and a half years ago," Horne said. He said he did not like some of the people Bybee wanted to bring in. He thought the company formed to market the coatings, Mirage Architectural Products was now dissolved. But Utah's Division of Corporations shows it as still active. (A former Bybee partner, Gary Bishop of Pleasant Grove, says he is revving the coating business and Bybee moved on.)

Horne said he met John Swallow at a few meetings but he perceived him more as an attorney for Basic Research. He said the product was used to paint the deck at Swallow's house but they had some problems with it.

Today Evan Bybee is back in the herbal medicine business. More specifically, the brain food business. He has a new partner, new company and new product both named GungHo. It's a so-called energy shot drink somewhat akin to 5-Hour Energy shots but, according to promoters, works on a different principle.



Bybee's company cofounder, Danny Mason, says their formula builds neurotransmitters in the brain, improving mental sharpness in a way caffeine cannot. Company literature says:

**Research from the University of Utah led to a new company called GungHo, an energy gel shot for the brain. More than simple alertness, GungHo's proprietary blend of ingredients are proven to increase focus, concentration, memory storage, and memory recall, while avoiding the harsh rush, jitters, and crash common with other energy products. Dr. Perry Renshaw, director of Magnetic Resonance Imaging for The Brain Institute at the University of Utah, said, "GungHo is the only energy shot or drink that contains natural ingredients at proven effective doses to improve focus and concentration**

The company web site claims a patent is pending on the product. But he offered that the patent has since been rejected for reasons he did not want to detail.

Mason said he met Bybee in his LDS ward in Alpine, Utah. He said Bybee is a man of integrity having twice served as an LDS bishop. He said former Basic Research scientist Daniel Mowrey helped put together the formulation for GungHo. But despite Bybee's and Mowrey's involvement, he said, Basic Research has no connection to his company.