

A Partner's Right of Inspection Under Section 19 of the Uniform Partnership Act: The Case for a Reasonable Restrictions Amendment

This Comment discusses the legal and policy considerations behind placing time and manner restrictions on a partner's right to inspect partnership books. It concludes by proposing an amendment to § 19 of the Uniform Partnership Act that would allow for easy access to partnership books while protecting against disclosure of partnership trade secrets.

INTRODUCTION

Every member of a partnership¹ has a right to access and inspection of partnership books.² This right is an important method of policing each partner's duty of full disclosure.³ The right of inspection not only serves as a means by which a partner may detect another's wrongdoing,⁴ but also as a valuable tool for

¹ A partnership is defined as "an association of two or more persons to carry on as co-owners a business for profit." UNIFORM PARTNERSHIP ACT § 6(1), reprinted in 6 UNIFORM LAWS ANNOTATED 22 (West 1979) [hereinafter cited as U.P.A.].

² U.P.A. *supra* note 1, § 19.

³ U.P.A., *supra* note 1, §§ 19-20. U.P.A. § 20 provides that partners must give "true and full information of all things affecting the partnership." A partner could not be certain of the truth of the information given without a method for checking this information. Section 19 of the U.P.A. provides such a method by allowing partners to inspect information contained in the partnership books and records.

⁴ Adequate and correct information is important if a partner is to protect his rights and prevent action designed to divest him of his interest in the partnership or its profits. Because of this and the presence of a considerable risk of personal liability in partnership transactions, the provisions of the Uniform Partnership Act relating to the accessibility of information serve as valuable reminders

making informed decisions affecting the operation and management of the partnership.⁵

Section 19 of the Uniform Partnership Act [U.P.A.]⁶ provides that "the partnership books shall be kept, subject to any agreement between the partners,⁷ at the principal place of business of the partnership, and *every partner shall at all times have access to and may inspect any copy any of them.*"⁸ While on its

of partners' informational duties.

F. O'NEAL & J. DERWIN, *EXPULSION OR OPPRESSION OF BUSINESS ASSOCIATES* § 6.10 (1961); *see also* Comment, *Rights and Obligations of Partners*, 45 *TUL. L. REV.*, 367-74 (1971).

⁵ The right of inspection serves both to provide concrete information on management and to protect a partner's investment in the partnership. J. CRANE & A. BROMBERG, *LAW OF PARTNERSHIPS* 383 n.11 (1968). *See also* note 3 *supra*.

⁶ The Uniform Partnership Act was approved by the Commissioners on Uniform Laws in October of 1914. To date 48 states and three U.S. jurisdictions have adopted the U.P.A. *See note 8 infra*. For a brief history of the U.P.A. *see* 2 J. BARRETT & E. SEAGO, *PARTNERS AND PARTNERSHIPS: LAW AND TAXATION* 445-47 (1956).

⁷ Although there is little litigation on the subject, a recent treatise has construed the phrase "subject to any agreement" contained in § 19 to apply only to where the books are to be kept, not to the right of inspection itself. H. REUSCHLEIN & W. GREGORY, *HANDBOOK ON THE LAW OF AGENCY AND PARTNER* 285 (1979).

⁸ U.P.A., *supra* note 1, § 19 (emphasis added). With the exception of Alabama, every jurisdiction that has adopted the U.P.A. has adopted the original wording of § 19. (For the text and citation of the Alabama right of inspection, *see note 44 infra*.) The following is a list of all the jurisdictions that have adopted § 19 as originally written. Alaska (ALASKA STAT. § 32.05.140 (1979)); Arizona (ARIZ. REV. STAT. ANN. § 29-219 (1976)); Arkansas (ARK. STAT. ANN. § 65-119 (1966)); California (CAL. CORP. CODE § 15019 (West 1977)); Colorado (COLO. REV. STAT. § 34-57 (West 1969)); Delaware (DEL. CODE ANN. TIT. 6, § 1519 (1975)); District of Columbia (D.C. CODE ENCYCL. § 41-318 (West 1968)); Florida (FLA. STAT. ANN. § 620.65 (West 1977)); Guam (GUAM CIV. CODE § 2413 (1970)); Hawaii (HAWAII REV. STAT. § 425-119 (Supp. 1975)); Idaho (IDAHO CODE § 53-319 (1979)); Illinois (ILL. ANN. STAT. CH. 106½, § 19 (Smith-Hurd 1952)); Indiana (IND. CODE § 23-4-1-19 (1976)); Iowa (IOWA CODE ANN. § 544.19 (West Cumm. Supp. 1979)); Kansas (KAN. STAT. ANN. § 56.319 (1976)); Kentucky (KY. REV. STAT. § 362.240 (1972)); Maine (MAINE REV. STAT. ANN. TIT. 31, § 299 (1978)); Maryland (MD. CORP. & ASS'NS CODE ANN. § 9-402 (1975)); Massachusetts (MASS. GEN. LAWS ANN. CH. 108A, § 19 (West 1958)); Michigan (MICH. STAT. ANN. § 20.19 (1975)); Minnesota (MINN. STAT. ANN. § 323.18 (West 1966)); Mississippi (MISS. CODE ANN. § 79-12-37 (Supp. 1979)); Missouri (MO. ANN. STAT. § 358.190 (Vernon 1968)); Montana (MONT. REV. CODES ANN. § 63-302 (1970)); Nebraska (NEB. REV. STAT. § 67.319 (1976)); Nevada (NEV. REV. STAT. § 87.190 (1973)); New Hampshire (N.H. REV. STAT. ANN. § 304-A:19

face the language of section 19 appears to grant an absolute right of inspection, in practice the right of inspection is usually interpreted as being subject to reasonable restrictions.⁹ The question of what restrictions, if any, may be placed on a partner's access to books have not often reached the courts.¹⁰ There

(Supp. 1979)); New Jersey (N.J. STAT. ANN. § 42:1-19 (West 1940)); New Mexico (N.M. Stat. Ann. § 54-1-19 (1978)); New York (N.Y. PARTNERSHIP LAW § 41 (McKinney 1948)); North Dakota (N.D. CENT. CODE § 45-07-02 (1978)); Ohio (OHIO REV. CODE ANN. § 1775.18 (Page 1978)); Oklahoma (OKLA. STAT. ANN. TIT. 54, § 219 (West 1969)); Oregon (OR. REV. STAT. § 68.320 (1979)); Pennsylvania (PA. CONS. STAT. ANN. TIT. 59, § 332 (Purdon Supp. 1979)); Rhode Island (R.I. GEN. LAWS § 7-12-30 (1970)); South Carolina (S.C. CODE § 33-41-520 (1977)); South Dakota (S.D. COMPILED LAWS ANN. § 48-3-10 (1969)); Tennessee (TENN. CODE ANN. § 61-118 (1976)); Texas (TEX. REV. CIV. STAT. ANN. ART. 6132b, § 19 (Vernon 1970)); Vermont (VT. STAT. ANN. TIT. 11, § 1242 (1973)); Virgin Islands (V.I. CODE ANN. TIT. 26, § 72 (1970)); Virginia (VA. CODE § 50-19 (1974)); Washington (WASH. REV. CODE ANN. § 25.04.190 (1969)); West Virginia (W. VA. CODE § 47-8A-19 (1976)); Wisconsin (WIS. STAT. ANN. § 178.16 (West 1974)); Wyoming (WYO. STAT. § 17-13-402 (1977)).

⁹ Although a literal interpretation of § 19 appears to grant an absolute right of inspection, the authors of model partnership agreement forms suggest limiting the right of inspection to reasonable times.

The following are formbook examples of suggested provisions to be placed in the partnership agreement to govern the keeping and inspection of partnership books:

1. Books of account for the partnership shall be kept on an accrual basis and each partner or his accredited representative shall have access thereto *at all reasonable times*. The books of account shall be audited each year by a certified public accountant chosen by the partners. A bank account or bank accounts shall be maintained in such bank or banks as may be agreed upon by the partners. All funds of the partnership shall be deposited in its name in such account or accounts and all withdrawals therefrom shall be made upon checks signed by either. . .

2 J. BARRETT & E. SEAGO, PARTNERS AND PARTNERSHIPS: LAW AND TAXATION, 530 (1956) (emphasis added).

2. Proper and complete books of account shall be kept at all times and shall be open to inspection by any partner or his accredited representative *at any reasonable time during business hours*. The books of account shall be examined and reviewed as of the close of each fiscal year by an independent certified public accountant agreeable to the partners, who shall make a report thereon.

J. MULDER, M. VOLZ & A. BERGER, THE DRAFTING OF PARTNERSHIP AGREEMENTS 38-39 (1967) (emphasis added). *Contra*, 4A CALIFORNIA LEGAL FORMS: TRANSACTION GUIDE 15-108 (Matthew-Bender 1979); G. MILKIE, PARTNERSHIPS AND PROFESSIONAL CORPORATIONS 199 (1972).

¹⁰ Since the Uniform Partnership Act was written only two cases have dis-

are, however, significant consequences which flow from the two alternative means of resolving the issue whether a partnership agreement may place restrictions on a partner's right of access.¹¹

An absolute right of inspection is potentially disruptive to a partner's business and personal affairs. For example, one partner might continually ask either to inspect the books or to inspect them in a manner so as to disclose partnership trade secrets unknowingly.¹² Thus, this comment proposes that section 19 be amended to provide for reasonable restrictions on a partner's right of access.¹³ It discusses the legal and policy considerations behind placing time¹⁴ and manner¹⁵ restrictions on a partner's right to inspect the books.¹⁶ To date, reasons for such restric-

cussed the possibility of limiting a partner's right of inspection. See *Sanderson v. Cooke*, 256 N.Y. 73, 175 N.E. 518 (1931); *People v. Phillips*, 137 N.Y.S. 2d 697 (1955)

¹¹ For a discussion of the problems associated with two alternative means of interpreting § 19 see text accompanying notes 65-67 *infra*.

¹² For a discussion of partnership trade secrets and their possible disclosure see text accompanying notes 39-43 *infra*.

A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

12 R. MILGRIM, BUSINESS ORGANIZATIONS: TRADE SECRETS § 2.01 (1978).

¹³ For a discussion and look at the suggested amendment to § 19 see text accompanying notes 65-68 *infra*.

¹⁴ The purpose for restricting the times at which a partner may inspect the books is to prevent a partner from making unreasonable demands to see the books at all hours of the day or night. Both case law and commentators have recognized the need for such restrictions. See, H. REUSCHLEIN & W. GREGORY, *supra* note 7, at 284-85; *Sanderson v. Cooke*, 256 N.Y. 73, 175 N.E. 518 (1931), and note 9 *supra*. Accordingly this comment proposes the adoption of an amendment to § 19 that will limit a partner's right of inspection to the business hours of the partnership. See text accompanying notes 67 & 68 *infra*.

¹⁵ Restricting the manner in which a partner may inspect the books can serve several purposes. The primary purpose, however, is to prevent the possible disclosure of partnership trade secrets. This potential problem arises where a partner enlists an agent to aid in the inspection of the books. For a discussion of this problem see text accompanying notes 39-43 *infra*. For a definition of trade secrets see note 12 *supra*.

¹⁶ There are numerous restrictions that might be placed on a partner's right to inspect partnership books. However, only a few of these restrictions can

tions have not been adequately expressed in judicial opinions or in scholarly discussions of the U.P.A.¹⁷

I. COMPETING INTERPRETATIONS OF SECTION 19

There are two possible interpretations of section 19. The first, a strict statutory interpretation, suggests that to allow any restrictions on the right of inspection is contrary to the unqualified wording of section 19. The second interpretation sees section 19 as conferring a right of inspection which is subject to reasonable restrictions. The authority supporting both interpretations is discussed below.

A. *Literal Interpretation of Section 19*

In determining a statute's meaning, the first rule of statutory construction is to look to the plain language of the statute.¹⁸ According to this general rule, where the language is plain and unambiguous a court's duty of interpretation does not arise and rules of interpretation do not apply.¹⁹ The court gives full effect

serve their purpose (e.g., to protect the partnership from harassment or possible disclosure of trade secrets) and still allow for broad access to partnership information.

Among the limitations rejected by this comment are those requiring a showing of either good faith or proper purpose on the part of a partner wishing to inspect the books. Both limitations are recognized under English partnership and American corporate law. See C. DRAKE, *LAW OF PARTNERSHIP* 99 (2d ed. 1977); 2 G. HORNSTEIN, *CORPORATION LAW AND PRACTICE* 129, 131-33 (1959). The purpose of both limitations is to protect the partnership (or corporation) from unnecessary or harmful inspections of the books. *Id.* As applied these limitations provoke serious problems.

The ambiguity in these restrictions make it unclear when a partner may exercise his or her right of inspection. Some of the pertinent questions which remain unresolved are who determines what constitutes a proper purpose or good faith application to see the books? How much time can lapse before a partner wishing to see the books is told whether his or her application is in good faith or for a proper purpose? It is for this reason that the two mentioned limitations are ill-advised.

¹⁷ For a discussion of which authorities have recognized yet not explained the need for reasonable restrictions see text accompanying notes 44-52 *infra*.

¹⁸ 2A C. D. SANDS, *SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION* § 46.01 (4th ed. 1972) [hereinafter cited as SUTHERLAND].

¹⁹ *Caminetti v. United States*, 242 U.S. 470 (1917); *Sears, Roebuck & Co. v. United States*, 504 F.2d 1400 (3d Cir. 1974). For authority to the contrary see notes 22 & 23 *infra*.

to every word, clause and sentence of the statute without consulting other indicia of intent.²⁰

A literal interpretation of section 19 would allow for an absolute right of inspection since the text provides that "every partner *shall at all times* have access to and may inspect and copy any. . ." of the partnership books.²¹ However, even where the language of a statute is unambiguous it may no longer be sufficient merely to inquire into the plain words of a statute to determine its intended meaning.²² Many cases indicate that courts are not confining their inquiry to the text of the statute; instead they are considering other indicia of intent at the outset.²³ Thus, under the literal interpretation approach of these recent cases, it is proper to look to other sources to determine if section 19 was

²⁰ *United States v. Menasche*, 348 U.S. 528 (1955); *Kish v. Montana State Prison*, 161 Mont. 297, 505 P.2d 891 (1973); *Blue Mountain Forest Ass'n. v. Town of Croydon*, 117 N.H. 365, 373 A.2d 1313 (1977); *State v. Bartly*, 39 Neb. 353, 58 N.W. 172 (1894).

²¹ U.P.A., *supra* note 1, § 19.

²² There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however, clear the words may appear on 'superficial examination.

(footnotes omitted.) *United States v. Amer. Trucking Ass'ns*, 310 U.S. 534, 543-44 (1940); *see also State ex rel. Cox v. Wilson*, 277 Or. 747, 562 P.2d 172 (1977).

²³ "In determining the meaning of statutory language, it is not sufficient to consider only the words in question. The *purpose of the law and the circumstances under which the language was employed are also of prime consideration.*" *American Export Isbrandtsen Lines, Inc. v. United States*, 499 F.2d 552, 579 (Ct. cl. 1974) (emphasis added); *In Sea Land Service, Inc. v. United States*, 493 F.2d 1357 (1974), *cert. denied*, 419 U.S. 840 (1974), the U.S. Court of Claims rejected a literal interpretation of a provision of the Vessel Exchange Act. In reaching this result the Court not only looked to the words of the statute, but also the purpose and circumstances under which it was enacted. *See also Hodgson v. Elk Garden Corporation*, 482 F.2d 529, 533 (4th Cir. 1973); *Cox v. United States*, 371 F. Supp. 1257, 1260 (9th Cir. 1973).

intended to confer an absolute right of inspection.

A comparison between the English Partnership Act of 1890²⁴ and section 19 of the U.P.A. is instructive. The English Act served as a model to the drafters of the American U.P.A.²⁵ As adopted, the language of section 19 is substantially identical to the common law rules on the right of inspection²⁶ and the statutory provisions of section 24, subsection 9, of the English Act;²⁷ this suggests the drafter's intent to enact the substantive provisions of the English Act. However, subsection 9 of the English Act is subject to the controlling language of another section of that Act, which allows partners by express or implied agreement to limit their right of access.²⁸ The U.P.A. has no corresponding

²⁴ PARTNERSHIP ACT OF 1890, 53854 Vict., c.39, reprinted in 24 HALSBURY'S STATUTES OF ENGLAND 513 (3d ed. 1970).

²⁵ Lewis, *The Uniform Partnership Act*, 24 YALE L.J. 617, 621 (1915); Mer-sky, *The Literature of Partnership Law*, 16 VAN. L. REV. 389 (1963); H. REUSCHLEIN & W. GREGORY, HANDBOOK ON THE LAW OF AGENCY AND PARTNERSHIP 247 (1979).

²⁶ "[T]he Act for the most part, is a restatement of those common law principles that prevail throughout the decisions of most states. Only in a few instances does it deviate; and in most of these the principle expressed had previously been enunciated by the courts of at least one jurisdiction." Mathews & Folkerth, *Ohio Partnership Law and the Uniform Partnership Act*, 9 OHIO ST. L.J. 616 (1948). See also Richards, *The Uniform Partnership Act*, 1 WIS. L.R. 90, 93-94 (1920); Williams, *The Uniform Partnership Act Comes to Nebraska*, 22 NEB. L.R. 215, 216-17 (1943); Nadler, *The Uniform Partnership Act Does Georgia Need to Improve Its Partnership Law?*, 16 GA. BAR J. 52, 56 (1954); Brandy & Elkouri, *The Uniform Partnership Law and the Uniform Partnership Act in South Carolina - Part 2*, 3 S.C.L.Q. 366, 445 (1950); Trotter, *The Uniform Partnership Act and its Effect Upon the West Virginia Decisions and Statutes*, 27 W. VA. L.Q. 28, 38 (1921).

²⁷ The similarity between § 19 and the corresponding section of the English Act can be seen by the drafters own comparison of the two in the seventh tentative draft of the U.P.A.

The Partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

Corresponding section 24 (9) E.

The English Act is practically identical: "The Partnership books are to be kept at the place of business of the partnership (or the principal place if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

UNIFORM PARTNERSHIP ACT § 19 (Tent. Draft No. 7, 1913).

²⁸ The pertinent section of the English Act provides that "[t]he interests of

section. The failure of the drafters of the U.P.A. to include a similar provision in section 19 may evidence their unwillingness to allow such restrictions and their interest in granting an absolute right of inspection.²⁹

B. Reasonable Restrictions Interpretation

The U.P.A. does not expressly allow any limitations on a partner's right of inspection.³⁰ A reasonable interpretation of section 19 would, however, allow for some limitations, since as a practical matter an absolute right of inspection could strain the partnership relationship. A partner could use this absolute right as a method to harass the other partners³¹ or in a manner which would result in the unknowing disclosure of vital partnership trade secrets.³² To prevent such abuses, some restrictions on a partner's right of inspection are necessary.

Two lines of authority support the reasonable restrictions in-

partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules: . . ." PARTNERSHIP ACT OF 1890, *supra* note 24, at 513. It is unclear to what extent English courts would allow partners to restrict one another's right of access. Leading partnership commentators of the time agreed that total exclusion by agreement was permissible. According to one author: "It is the right of each partner to have free access to the books, and make copies or extracts from them . . . unless he had given up his right of access by contract." 1 C. BATES, THE LAW OF PARTNERSHIP 315 (1888) [emphasis added]. See also 2 N. LINDLEY, A TREATISE ON THE LAW OF PARTNERSHIP 947 (2d ed. 1888); W. GEORGE, HANDBOOK ON THE LAW OF PARTNERSHIP 178 (1897); and E. GILMORE, HANDBOOK ON THE LAW OF PARTNERSHIP INCLUDING LIMITED PARTNERSHIPS 379 (1911).

²⁹ "Where a statute, with preference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed." SUTHERLAND, *supra* note 18, § 51.02.

Had the drafters of the of the U.P.A. wished to provide for a right of inspection more similar to the English right they could have placed the right of inspection in section 18 of the U.P.A. Section 18 provides that the rules governing partners inter se are subject to the following rules (the statute then goes on to list certain rules governing partners) absent an express or implied agreement. U.P.A., *supra* note 1, § 18.

³⁰ Section 19 lacks any specific language which would support limiting a partner's right of inspection. U.P.A. *supra* note 1, § 18.

³¹ For a discussion of how a partner could use an absolute right of inspection to harass other partners, see note 14 *supra*.

³² For a definition of "trade secrets" see note 12 *supra*. See also text accompanying notes 39-43 *infra*.

terpretation of section 19. First, certain rules of statutory construction favor reading a statute to provide sensible results.³³ Second, commentators, statutes, and limited case law³⁴ recognize the need for some restrictions on a partner's right of inspection.

Although generally the words of a statute are construed literally,³⁵ an exception to this rule exists where a literal interpretation would lead to an unreasonable result.³⁶ In such a situation the statute should be interpreted in a manner producing a more sensible result.³⁷

Interpreting section 19 as conferring an absolute right of inspection is not only impractical, but also unreasonable. To allow partners absolute discretion as to when, where, and in what manner they may inspect the firm books could work a hardship on the partnership. A partner could effectively disrupt the partnership business by constantly requesting to see the firm books.³⁸ A literal interpretation of section 19 would not preclude a partner from making such unreasonable demands.

Moreover, an absolute right of inspection could result in the disclosure of partnership trade secrets, since a partner's right to inspect the books carries with it the right to employ an agent (usually an attorney or accountant) to aid in the inspection.³⁹ A

³³ Kotlikoff v. Township of Pennsauken, 131 N.J. Super. 590, 591, 331 A.2d 42, 45 (1974) ("Statutes are to be read sensibly rather than literally"); Mahone v. Mahone, 213 Kan. 346, 517 P.2d 131 (1973); Newbolt v. Board of Education of Berea In. Sch. Dist., 409 S.W.2d 513 (1967). See also SUTHERLAND, *supra* note 4, at § 45.12.

³⁴ Sanderson v. Cooke, 256 N.Y. 73, 175 N.E. 518 (1931); People v. Phillips, 137 N.Y.S. 2d 697 (1955).

³⁵ See notes 19 & 20 *supra*.

³⁶ United States v. Brown, 333 U.S. 18, 25 (1948) ("The canon in favor of strict construction is not an inexorable command to override common sense and evident statutory purpose."); Candlestick Properties, Inc. v. San Francisco Bay Conservation and Dev. Comm'n, 11 Cal. App. 3d 557, 569, 89 Cal. Rptr. 897, 904 (1st Dist. 1970) ("A statute must be given a reasonable construction . . ."); Rice v. Ashland County, 108 Wis. 189, 192, 84 N.W. 189, 190 (1900) ("Hence if, viewing a statute from the stand point of the literal sense of its language, it is unreasonable or absurd, an obscurity of meaning exists, calling for judicial construction.").

³⁷ See note 33 *supra*.

³⁸ See note 14 *supra*.

³⁹ Although § 19 does not expressly state that a partner may use an agent to aid in the inspection of the books a reasonable interpretation assumes such. As was stated in the landmark English case of Bevan v. Webb, [1901] 2 Ch. 59, the right of a partner to inspect the partnership books, where he cannot do so

literal interpretation of section 19 does not restrict a partner's selection of an agent. This freedom of selection unnecessarily risks the disclosure of partnership trade secrets.⁴⁰ Trade secrets may take the form of specialized customer lists, methods of bookkeeping, rebates or concessions in a price list or catalogue, and other information which is readily found in the partnership books.⁴¹ Inspection by "outsiders" increases the risk of disclosure.⁴² Thus a restriction, such as a requirement that partners gain their partner's approval before employing a particular agent, is both reasonable and necessary to safeguard the secrecy of partnership trade secrets.⁴³

Because of the impracticality and unreasonableness of an absolute right of inspection, some authorities have imposed reasonable restrictions. In Alabama, for example, when the state legislature adopted section 19 of the U.P.A. they amended it by limiting the right of inspection to "reasonable times."⁴⁴ The most current treatise on the law of partnership recognizes the same limitation, stating that partners, like corporate shareholders, are only entitled to examine the partnership books at "reasonable times."⁴⁵ Although neither the treatise's authors nor the

effectively without the aid of an agent, carries with it the right to employ an agent. This logic is equally valid under American partnership law. A right to inspect books is of little value if one is incapable of understanding their content.

⁴⁰ Although the partner employing the agent may not intend to disclose any partnership trade secrets there is nothing to protect the partnership from disclosure by the agent. The fact that the partnership could bring an action against a wrongdoing agent is of little solace once the partnership trade secret has been disclosed.

⁴¹ For a definition of trade secrets *see* note 12 *supra*.

⁴² *See* note 40 *supra*.

⁴³ For a look at the proposed amendment to § 19 *see* text accompanying notes 67 & 68 *infra*.

⁴⁴ ALA. CODE § 10-8-45 (1975) "The partnership books shall be kept, except as otherwise provided by an agreement between the partners, at the principal place of business of the partnership, and every partner shall *at all reasonable times* have access to and may inspect and copy any of them." (emphasis added).

⁴⁵ H. REUSHLEIN & W. GREGORY, *supra* note 7, at 284-85. Although the treatise authors do not cite any authority for their comparison of a shareholders' and partners' right of inspection, the analogy is a valid one. As stated by the Comment, *Corporations - Right of Stockholder to Compel Leave to Inspect Books of a Delaware Corporation*, 30 MICH. L. REV. 769 (1932), "At common law an incident to the ownership of stock in a corporation is the right or privi-

Alabama legislature defined a "reasonable time," it is clear that some restriction is appropriate.⁴⁶

Some case law, albeit sparse, supports a reasonable restrictions interpretation of U.P.A. § 19.⁴⁷ Dictum in two cases mentions the possibility of limiting a partner's right of access.⁴⁸ In *Sanderson v. Cooke*⁴⁹ the New York Court of Appeals stated that a partner's right of inspection is limited to "reasonable times" and, after dissolution of the partnership, may be restricted by special agreement.⁵⁰ *People v. Phillips*,⁵¹ also a New York case, mentioned limitations on the right of inspection. The *Phillips* court cited *Sanderson* for the proposition that partners could agree to limit their right of inspection, stating that partners have an equal right to inspect the books in the absence of an agreement to the contrary.⁵² This language not only recognizes the need for some limitations on the right of inspection, but also suggests that partners may, between themselves, agree on what limitations to impose.

In summary, the reasonable restrictions interpretation and a literal interpretation of section 19 are supported by some au-

lege to inspect the books or records of the corporation. The right is analogous to that of partners to examine the records and books of the firm."

See also 5 W. FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS 693 (1976). Moreover, 2 G. HORNSTEIN, CORPORATION LAW AND PRACTICE, 134 (1959) stated that "[t]he right of inspection may, nevertheless, be reasonably regulated, and a typical provision limits its exercise to 'reasonable hours' and in such a manner as not to unreasonably interfere with the corporation business." (footnotes omitted).

⁴⁶ It should be noted that, although the two treatises authors, REUCHLEIN & GREGORY, *supra* note 3, did not define what a reasonable time was, they did include in a model partnership agreement that the books be open at "any reasonable time during business hours." H. REUSCHLEIN & W. GREGORY, *supra* note 3, at 571.

⁴⁷ In fact since the U.P.A. was written, only two cases have mentioned the possibility of restricting a partners right of access. See note 48 *infra*.

⁴⁸ *Sanderson v. Cooke*, 256 N.Y. 73, 175 N.E. 518 (1931); *People v. Phillips*, 137 N.Y.S. 2d 697 (1955). It should be noted that neither *Sanderson* nor *Phillips* purported to interpret § 19. However, at the time the cases were decided New York had already adopted the Uniform Partnership Act.

⁴⁹ 256 N.Y. 73, 175 N.E. 518 (1931).

⁵⁰ "The general rule regarding business partnerships is that books should be kept, open to the inspection of any partner at all reasonable times, even after dissolution, subject, however, to special agreement." *Id.* at 520.

⁵¹ 137 N.Y.S.2d 697 (1955).

⁵² *Id.* at 699.

thority. The advantages and disadvantages of both interpretations are discussed below.

II. UTILITY OF LITERAL VS. REASONABLE INTERPRETATIONS OF SECTION 19

The desirability of either of the two interpretations hinges on the nature of partnerships. A partnership is "an association of two or more persons to carry on as co-owners of a business for profits."⁵³ As principals, partners directly own an undivided share of the partnership.⁵⁴ Each partner as principal and/or agent for fellow co-partners has implied authority to act for all the partners within the scope of the partnership business.⁵⁵ In the absence of an agreement to the contrary, each partner has an equal right to take part in the management of the business.⁵⁶

The almost limitless power of every partner to act on behalf of the partnership carries with it the risk of joint and several liability.⁵⁷ A partner's liability extends not only to his or her invest-

⁵³ U.P.A., *supra* note 1, § 6 (1).

⁵⁴ "Direct ownership results in personal liability; not only the individual's investment but also his personal fortune can be called upon to make good any liabilities incurred within the scope of the partnership business." 1 G. HORNSTEIN, *CORPORATION LAW AND PRACTICE* 4 (1959).

⁵⁵ U.P.A., *supra* note 1, § 9

⁵⁶ U.P.A., *supra* note 1, § 18

⁵⁷ U.P.A., *supra* note 1, §§ 13-15.

§ 13. *Partnership Bound by Partner's Wrongful Act.* Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefore to the same extent as the partner so acting or omitting to act.

§ 14. *Partnership Bound by Partner's Breach of Trust.* The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

§ 15. *Nature of Partner's Liability*

All partners are liable:

(a) Jointly and severally for everything chargeable to the partner-

ment in the partnership, but also to the partner's personal funds.⁵⁸ In fact, partners are in the precarious position of waging their personal funds and livelihood on the assumption that their co-partners will at all times act in the best interest of the firm and in accordance with the laws.⁵⁹ Thus, easy access to all information affecting the partnership is essential to policing other partners' actions, protection of a partner's own interest,⁶⁰ and the operation of the partnership.⁶¹

The protection afforded by a right of inspection lies in its deterrent effect. Presumably a partner would be hesitant to misapply funds where the books are subject to unrestricted inspection by other partners.⁶² But this deterrent effect is not significantly reduced by allowing reasonable restrictions on a partner's right of inspection. A partner would be equally hesitant to misapply funds where he or she knows that the books are open to inspection during regular office hours.

There are other reasons for limiting the right of inspection. As previously discussed, an absolute right is impractical; it could

ship under sections 13 and 14.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

⁵⁸ "The most unwelcome feature of the partnership form of doing business, from the point of view of the partners, is the unlimited personal liability of each partner for all the obligations of the business, including those wrongfully incurred by another partner." C. ROHRlich, *ORGANIZING CORPORATE AND OTHER BUSINESS ENTERPRISES* § 4.15 (4th ed 1967).

⁵⁹ G. HORNSTEIN, *supra* note 16, at 4.

⁶⁰ A situation that best illustrates the need for easy access to information is where partners decide to eliminate or exclude another partner from the business. Such conduct has been termed a "squeeze out." F. O'NEAL & J. DERWIN, *supra* note 4, § 1.01. Although there are various ways to "squeeze out" a partner most of these methods include restricting a partner's access to partnership books. The reason for this is that by limiting or denying a partner access to books in records the "squeezers" are able to conceal any unlawful acts or other squeeze out activities. Because of this it is essential that partners have easy access to partnership books. See generally F. O'NEAL & J. DERWIN, *supra* note 4, § 6.10. See also Comment, *The Expulsion in a Partnership Agreement: A Planned Dissolution*, this issue at 867.

⁶¹ See note 4 *supra*.

⁶² "Utilization of the right of inspection at periodic intervals may prevent a prospective squeeze-play or enable a prospective squeezer to counter squeeze-out action before it has gone too far." F. O'NEAL & J. DARWIN, *supra* note 4, § 5.13.

strain partnership relations and unnecessarily risk the disclosure of partnership trade secrets.⁶³ However, a "reasonable restrictions" interpretation also raises problems.

The major problem with a "reasonable restrictions" interpretation is one of utility. Those advocating a reasonable time standard fail to provide any guides for determining what is a "reasonable time."⁶⁴ The absence of such guides may provide co-partners with too much discretion to limit or expand a partner's right of inspection. Moreover, a standard of reasonableness does not provide enough definition to be workable on a day to day basis; it fails to provide a specific objective standard which can be readily ascertained without reference to the often questionable motives of a wrongdoing partner. Thus, partners are left to determine among themselves what is reasonable; if they are unable to agree, a court may be forced to intervene.

It is with the above concerns in mind that this comment suggests the following amendment to section 19.

III. PROPOSED AMENDMENT TO SECTION 19

The nature of a partnership demands that there be both easy access to partnership books⁶⁵ and protection against possible disclosure of partnership trade secrets.⁶⁶ However, neither of the two interpretations of section 19 meets this dual requirement. An absolute right of inspection is deficient because it does not protect against a partner's abuse of the absolute right. The reasonable restrictions interpretation, while protecting against possible abuses by allowing restrictions to be placed on a partner's right to inspect, is currently inadequately defined.⁶⁷ Therefore, this comment suggests an amendment to U.P.A. section 19 which would provide a framework for determining what is reasonable, thereby preventing any unnecessary restrictions.

Proposed Amendment to § 19 (Text)

The partnership books shall be kept, subject to any agreement be-

⁶³ For a discussion of the impracticality of an absolute right of inspection, see text accompanying notes 39-43 *supra*.

⁶⁴ See text accompanying notes 44-46 *supra*.

⁶⁵ For a discussion of the need for easy access, see notes 58, 60 & 62 and accompanying text *supra*.

⁶⁶ For a discussion of partnership trade secrets and their possible disclosure, see text accompanying notes 39-43 *supra*.

⁶⁷ See text accompanying notes 44-46 *supra*.

tween the partners, at the principal place of business of the partnership. Every partner (and agent, selected with the approval of co-partners) shall during all business hours have access to and may inspect and copy any of the partnership books. Partnerships with no set or formal business hours shall make the partnership books available for inspection at least three times a week for a minimum of two hours a day.

Proposed Official Comments to Accompanying § 19 as Amended. The purpose of the new section 19 is to provide for easy access to partnership information while protecting against harassment and possible disclosure of partnership trade secrets. The phrase "subject to any agreement" refers only to where the books are to be kept. Partners may not limit one another's right of inspection by express or implied agreement. The term "business hours" is defined as those hours during which the partnership is normally engaged in business. For partnerships which have no set or formal business hours this phrase is construed to mean that the partnership books will be open for inspection at least three times a week for a minimum of two hours. This should allow sufficient time for a partner to read, inspect or copy the partnership books.

The purpose of limiting a partner's choice of agent to aid in the inspection of the books is to protect the partner from unscrupulous agents. Thus, a partner's choice of agent is subject to the approval of a majority of the co-partners. This approval will be granted in every instance, unless it can be shown by some sort of documentation that the agent selected is untrustworthy. Upon such a showing it is suggested that the co-partners aid the partner who selected the agent in finding a more acceptable agent.

The proposed amendment to section 19 differs from the present U.P.A. in two respects. First, the partners may only inspect the partnership books as a matter of right during the business hours of the partnership. This restriction represents a compromise between an absolute right of inspection and a right of inspection subject to reasonable restrictions. Unlike a "reasonable restriction" standard, the amendment clearly defines the scope of a partner's right of access; partners may inspect the partnership books during all business hours. Thus, the proposed restriction avoids the problems associated with giving partners too much discretion in deciding when the books may be inspected. However, because books must be open during business hours partners still have relatively easy access to partnership books.

Since a partnership can range from a complex business with formal business hours to a business only open a few days a week, an amendment to section 19 should allot a minimum time for inspecting the books. The proposed requirement that partnerships without formal business hours have their books open for

inspection at least three days a week for a minimum of two hours meets this need. The requirement guarantees that partners will always have access to the books during certain times of the week.

The second major change provides that a partner's choice of agent to assist inspection is subject to the approval of a majority of the co-partners. As previously discussed, allowing a partner total freedom to choose an agent to inspect the books can result in the disclosure of partnership trade secrets.⁶⁸ Requiring partner approval minimizes this risk. Co-partners, however, should not abuse their right to reject a partner's choice of agent, and thereby prevent a partner from examining the partnership books. Therefore, the guidelines suggest that approval of the agent be granted in almost every instance. In order to guarantee this type of approval, only a majority of the partners are needed and documentation must be shown to disqualify an agent. Moreover, suggesting that co-partners help a partner find another agent (upon that agent's disqualification), further guarantees that co-partners will be somewhat hesitant to unreasonably reject a partner's choice of agent.

CONCLUSION

The relationship between partners is based on trust and loyalty. To the extent that partners observe these ideals there is no need for any other rules governing partnerships. Nevertheless, because the partnership relationship exposes each partner to liability for the other's wrongdoing, a mechanism is needed which allows each partner to scrutinize the activities of fellow partners. One such mechanism is access to partnership books. However, the present U.P.A. section governing access does not expressly allow for any restrictions on a partner's right of access. Such unrestricted access to the books can seriously harm the partnership. Therefore, section 19 must be amended to both limit the right of inspection to business hours, and to protect the partnership from intentional or accidental disclosure of trade secrets.

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⁶⁸ See text accompanying notes 39-43 *supra*.