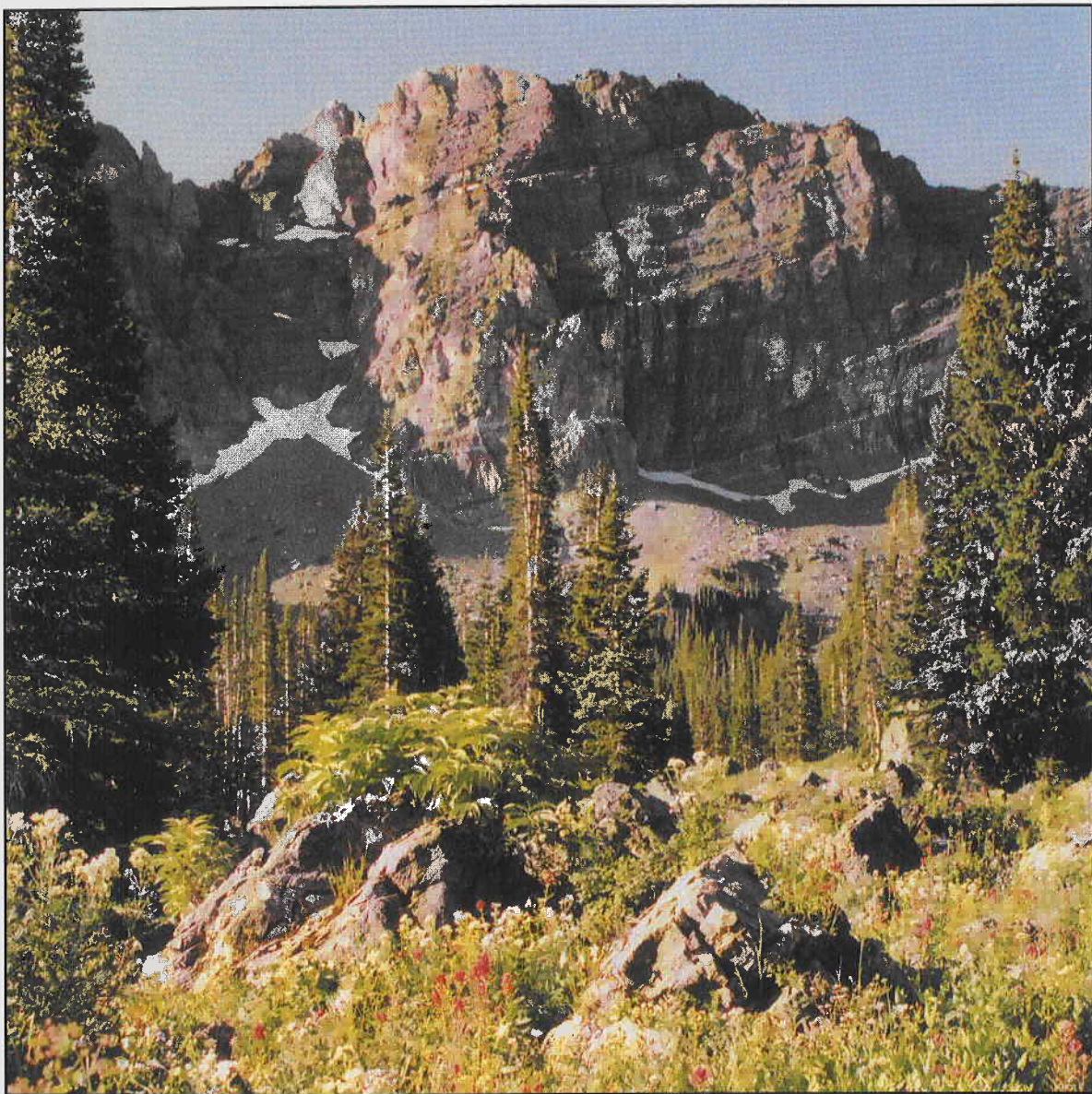


# UTAH BAR JOURNAL

Vol. 6 No. 4

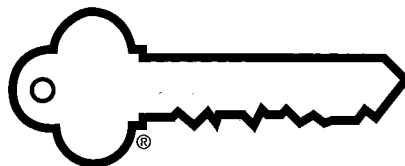
April 1993



## Special Environmental Law Issue

<b>Cost Recovery and Environmental Compliance Actions for Hazardous Substances and Petroleum Products</b>	<b>9</b>
<b>Reporting Requirements for Accidental Releases of Pollutants</b>	<b>15</b>
<b>The Duty to Defend Environmental Claims is Not Unlimited</b>	<b>18</b>
<b>Judicial Profiles</b>	<b>22</b>

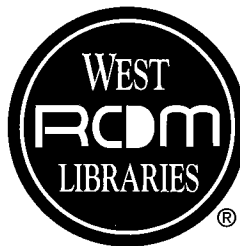
*Coming from  
West Publishing Company!*



CD-ROM  
FOR  
UTAH.

WITH WEST'S EXCLUSIVE KEY NUMBER SYSTEM.

To be  
placed on a  
priority mailing list, call  
1-800-255-2549 EXT. 333



**Published by The Utah State Bar**

645 South 200 East  
Salt Lake City, Utah 84111  
Telephone (801) 531-9077

**President**

Randy L. Dryer

**President-Elect**

H. James Clegg

**Executive Director**

John C. Baldwin

**Bar Journal Committee  
and Editorial Board****Editor**

Calvin E. Thorpe

**Associate Editors**

Randall L. Romrell  
William D. Holyoak  
M. Karlynn Hinman

**Articles Editors**

Leland S. McCullough Jr.  
David Brown  
Christopher Burke

**Letters Editor**

Victoria Kidman

**Views from the Bench Editor**

Judge Michael L. Hutchings

**Legislative Report Editors**

John T. Nielsen  
Barbara Wylly

**Case Summaries Editors**

Clark R. Nielsen  
Scott Hagen

**Book Review Editor**

Betsy L. Ross

**Advertising**

D. Kendall Perkins

David Benard  
Sanford Beshear  
Brad Betebenner  
Glen Cook

Bel-Ami de Montreux

David Erickson  
David Hartvigsen  
Hakeem Ishola  
Thomas Jepperson  
Brian Romriell  
J. Craig Smith  
Denver Snuffer  
John Steiger  
Judge Stephen VanDyke  
Barrie Vernon  
Terry Welch  
Judge Homer Wilkinson  
Elizabeth Winter

Letters .....	4
President's Message .....	5
by Randy L. Dryer	
Commissioner's Report .....	7
by Dennis V. Haslam	
Cost Recovery and Environmental Compliance Actions for Hazardous Substances and Petroleum Products .....	9
by John A. Adams	
Reporting Requirements for Accidental Releases of Pollutants .....	15
by Lucy B. Jenkins	
The Duty to Defend Environmental Claims is not Unlimited .....	18
by Samuel D. McVey	
State Bar News .....	20
Judicial Profiles	
Justice Christine M. Durham .....	22
by Elizabeth D. Winter	
Views from the Bench .....	34
"All You Ever Wanted to Know About the Judicial Counsel and Then Some" by Judge W. Brent West	
Legislative Report .....	38
The Barrister .....	39
Book Review .....	42
Utah Bar Foundation .....	44
CLE Calendar .....	45
Classified Ads .....	46

COVER: Alta, Utah, taken by Professor David A. Thomas, J. Reuben Clark Law School

Members of the Utah Bar who are interested in having their photographs published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Associate General Counsel, Huntsman Chemical Corporation, 2000 Eagle Gate Tower, Salt Lake City, Utah, 84111, 532-5200. Send both the slide (or the transparency) and a print of each photograph you want to be considered. Artists who are interested in doing illustrations are also invited to make themselves known.

The *Utah Bar Journal* is published monthly, except July and August, by the Utah State Bar. One copy of each issue is furnished to members as part of their State Bar dues. Subscription price to others, \$30; single copies, \$4.00. For information on advertising rates and space reservation, call or write Utah State Bar offices.

Statements or opinions expressed by contributors are not necessarily those of the Utah State Bar, and publication of advertisements is not to be considered an endorsement of the product or service advertised.

# LETTERS

The following outlines the background of an issue relating to the recent legislative action (or inaction) dealing with the environment, including wildlife and energy. A question is posed following the discussion — your input is sought.

## ISSUE:

Some believe that the environment fared poorly in this Utah State legislative session. Although it is difficult to delineate which bills solely related to environmental concerns, as of the date this issue went to press, only two of 31 such bills, which were considered favorable, were passed by the Legislature. The

“Cowboy Caucus,” a group of mostly rural legislators, was also seemingly hard on wildlife in passing several bills allowing the killing of wildlife without a license. Additionally, the Sierra Club has publicly criticized the Private Protection Act as not being in the best interests of the environment.

Concerns have also been voiced that a shift was made with respect to the state’s energy policy with little or no public input when, at the Governor’s urging, the Legislature voted to eliminate the Division of Energy this legislative session. The Division of Energy, legislatively created by unanimous vote in the Senate only two

years ago, is charged with developing, promoting and coordinating the implementation of the state’s energy policy. The legislation decentralizes the state’s energy policy making forces, placing the Conservation unit in the Department of Community and Economic Development and the Research and Planning unit in administration at the Department of Natural Resources.

## QUESTION:

Was the environment and/or wildlife treated fairly in this past legislative session?

Dear Editor

January’s Bar Journal presented a fair and reasoned discussion of continuing legal education.

I like CLE, but see no need or reason for *mandatory* CLE. The object — lawyers’ continual improvement — is just as likely to be met by voluntary as by mandatory participation. Conscientious lawyers will continue to learn and improve, regardless; others cannot be made to learn, or even listen, though they grudgingly sit through any number of compulsory lectures. Also, some lawyers are relatively disadvantaged, in that they can less easily absorb (or bill) the time and other costs of mandatory classes.

Professor David Thomas is right. We should not have mandatory CLE.

Sincerely,  
R. Douglas Credille

Dear Editor:

I read Mr. Jarrett Anderson’s letter to the editor about the article you published in the January issue of the *Bar Journal* regarding the pros and cons of mandatory CLE credits. I must say from my experience that I agree with him and Professor Thomas. I am licensed in both Utah and

Nevada, albeit on inactive status with Utah. However, the Nevada Bar requires mandatory CLE credits yearly.

I have attended many CLE seminars in Nevada and even some sponsored by California giving Nevada CLE credit and have not been impressed by the quality of these presentations. Granted, I have gleaned good things from them all, but have not received enough good information from any of them to justify the cost and the time spent. As Mr. Anderson alluded to, making CLE mandatory tends to dilute the effectiveness of the seminars since they are generally put together hastily by those who want to profit from the experience realizing the need of so many attorneys who procrastinate satisfying the requirement.

All too often these seminars are a good excuse for a vacation, not only for the participants, but also for the presenters. The time away from the office may not be all that bad for those of us who need to get away periodically, but making the credits mandatory is not the answer. Those of us who want to obtain further education in our chosen specialty will attend appropriate seminars whether they are mandatory or not. Those who do not take advantage of more educational opportunities do so at their own peril.

Sincerely,  
Glade A. Myler



**DataTrace Investigations, Inc.**  
**Scott L. Heinecke, B. S. Police Science**  
Specializing in:

- Asset & Background Checks
- Financial & Due Diligence
- Criminal Defense Investigations
- Witness Statements & Surveillance
- Missing Persons & Skip Tracing
- Business & Investment Fraud
- Nationwide Public Records
- Civil & Personal Injury

**(801) 261-8886**

Fax (801) 261-8858

Toll Free 800-748-5335

6526 South State Street, Suite 203, Salt Lake City, UT 84107



## Wanted: A Few Good Men & Women

By Randy L. Dryer

### 100 HELP WANTED

Hard working, well-adjusted individuals needed to run multi-million dollar, 5400 member organization. Must be willing to take verbal abuse from constituents and have low need for appreciation from others. Must have clients and/or partners who will tolerate periodic absences from regular employment. Interested persons may apply at the Utah Law & Justice Center. Inquiries confidential.

One of my goals this year as President has been to encourage the involvement of lawyers who traditionally have not participated in Bar governance and activities — most notably the solo and small firm practitioner. I realize this may seem odd coming from someone who has always practiced in a large, Salt Lake City law firm. Nonetheless, I believe strongly that the success or failure of the organized Bar ultimately will depend on how well we involve all segments of the Bar in the organization. Even though all of us must belong to the Bar, if the leadership is truly to speak for the lawyers of Utah, there cannot be a significant segment of the Bar who feels isolated or distant from the decision making process.

In an effort to meaningfully involve

solo practitioners in mainstream Bar activities, the Commission has taken several steps this year, including the creation of a Solo and Small Firm Task Force to study the unique needs of this segment of the Bar and the appointment of a solo practitioner to fill the vacancy on the Commission left by the resignation of Jan Graham after she was elected Utah Attorney General. Solo practitioners often tell me they would like to serve on the Bar Commission, but do not seek to do so because the financial cost of campaigning is a significant detriment. Most candidates for the Commission send out one or two mailings to the members of their district, which in the Second through Fourth Districts may require an expenditure of several hundred dollars for printing, and mailing. It is enough to lose billable hours by serving on the Commission, the argument goes, without also having to shell out actual dollars just for the privilege of running. Hold your horses — help is on the way!

While we on the Commission cannot realistically offer any relief on the amount of time required to serve on the Commission, we can address the cost of campaigning and, in fact, have recently done so.

Beginning with this year's elections, the Commission has virtually eliminated the financial cost of campaigning for a position

on the Bar Commission. The Bar will now provide, free of charge, space in the June/July issue of the Bar Journal (to be published around June 1) for a 200 word campaign message, plus a photograph. The space may be used for biographical information, platform statements or other election promotion. The campaign messages for the Bar Journal are due, along with the required nominating petitions, no later than April 30, 1993. In addition, the Bar will insert a one page letter from each candidate into the ballot mailer. Candidates are responsible for delivering to the Bar no later than May 7, 1993, enough letters for all attorneys in their district. Ballots will be mailed out mid-May. For those lawyers who still wish to send a personalized letter to the lawyers in their district, the Bar will now provide one set of mailing labels free of charge.

This action by the Commission is particularly commendable, given the fact that this new policy undoubtedly will increase the number of candidates for the Commission, some of whom may challenge incumbent Commissioners. This year there will be three open positions in the Third Division (with two incumbents who could seek re-election) and one position open in the First Division (with one incumbent). To their credit, all three of these incum-

bent Commissioners, Dennis Haslam, Charles Brown, and Jeff Thorne, supported these changes.

Serving on the Bar Commission is a tremendous commitment of time and energy, but results in a concomitant sense of satisfaction and contribution. Although there are a myriad of ways to contribute to the profession, none is more personally rewarding than serving on the Commission. In short, more of you should seriously consider running for the Commission. After all, who wouldn't like to (a) travel to exotic places like Price and Provo (no offense intended to those who practice in these areas); (b) attend insufferably

long meetings in the Law & Justice Center; (c) interact with judges in non-courtroom settings and call them by their first names; (d) preside over the professional life and death of your colleagues who have run afoul of the ethical rules; (e) be a named defendant in countless suits by disgruntled clients and lawyers; (f) see your monthly billables take a nosedive; and bask in the undying admiration and respect of your associates, friends and neighbors.

If all of the above sounds interesting and challenging — the Commission's for you. At least you can no longer say you would like to serve, but it costs too much to run!



## WINNING PSYCHOLOGICAL CASES

**An 8 Hour MCLE Seminar**  
*coming to SALT LAKE CITY*  
*June 17, 1993*

**Presented by:** *Dr. Christopher C. Layne of Toledo, Ohio, a renowned national expert witness, author and teacher. Registrants will receive a bonus of Dr. Layne's 2 hard-bound books: "Know Your Psychological Experts," 1992 (retail \$65) and "Psychological Torts Manual," 1993 (retail \$69) and a trial demonstration by distinguished trial attorneys.*

**Topics include:**

- *Prosecuting & defending psychological claims including emotional distress and post-traumatic distress*
- *Trial Demonstration by distinguished trial attorneys*
- *Strategies used in 50 multi-million \$ verdicts*
- *Custody*      ● *Insanity Defense*      ● *Proof of Damages*

**Registration:**      *\$135 Early registration includes both hardbound books (retail \$134) and a spiral workbook*  
*\$150 At door and less than 15 days before seminar*

**For brochure or registration: CALL 1-800-637-7897**

**American Professional Seminars, Inc.**  
**1-800-637-7897**      5724 Hull St. Rd., Suite 6  
Richmond, Virginia 23224

**FAX (804) 675-0424**

