

Utah Bar JOURNAL

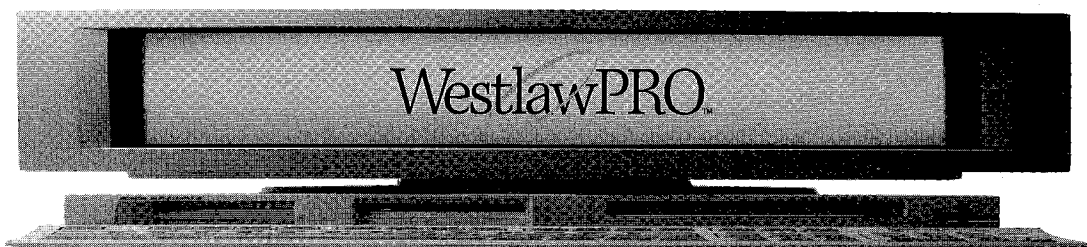
Volume 12 No. 4  
April 1999



**Calvin E. Thorpe**  
**May 22, 1938 – March 6, 1999**

Call now for  
new, lower pricing!

# GET THE POWER OF WESTLAW FOR AN AFFORDABLE



## FLAT RATE.

**Revolutionize how you do research with WestlawPRO for solos and small firms!**

Now is the time to make your move online. WestlawPRO™ gives you unlimited usage of what you use most – for one low monthly rate.

With access to far more information than in your print library, you can cover more ground in less time and level the playing field with bigger firms!

WestlawPRO gives you the advantages of case synopses, headnotes, Key Numbers, *annotated* statutes and forms, exhaustive cross-references and electronic links to related information. You can also add KeyCite™, the powerful new citation research service. And it's all amazingly current.

New to computerized research? Simple graphics and "plain-English" searching make WestlawPRO easy to use. If you need help, West Group Reference Attorneys are a toll-free call away, 24 hours a day.

**AVAILABLE DATABASES INCLUDE:**

Utah Supreme Court and Court of Appeals Cases, Utah Statutes Annotated, Utah Court Rules and Orders, Utah Administrative Code, Utah Attorney General Opinions and Utah Department of Commerce, Corporations and Limited Partnerships. United States Supreme Court Cases, United States Code Annotated®, Tenth Circuit and Federal District Court Cases are also available for a small additional fee.

For more information  
call **1-800-762-5272**,  
fax **1-800-291-9378**

or e-mail us at [utah@westgroup.com](mailto:utah@westgroup.com).  
Visit us online at [www.westgroup.com](http://www.westgroup.com).

# WestlawPRO™

I N F O R M A T I O N O N Y O U R T E R M S

# Table of Contents

Letters	4
President's Message Thanks Cal by James C. Jenkins	6
Commissioner's Report "Wouldn't Take Nothing for My Journey Now" by Teresa B. Cook	10
Role, Ritual and Civility in Litigation by Gary L. Johnson	12
"Is That a Fact?" – Evidence and the Trial Lawyer by Honorable Bruce S. Jenkins	19
State Bar News	26
The Young Lawyer	41
Legal Assistants Forum	46
Judicial Profile – Chief Justice Richard C. Howe by Lloyd R. Jones	48
Book Review by Betsy Ross	50
Case Summaries by Daniel M. Torrence	52
Utah Bar Foundation	54
CLE Calendar	58
Classified Ads	62

**VISION OF THE BAR:** *To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.*

**MISSION OF THE BAR:** *To represent lawyers in the State of Utah and to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of, the law.*

**COVER:** Calvin E. Thorpe – Editor, *Utah Bar Journal* 1988-1999.

Members of the Utah State Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, Randle, Deamer, Zarr, McConkie & Lee, P.C., 139 East South Temple, Suite 330, Salt Lake City, UT, 84111-1169, 531-0441. Send a print, transparency or slide of each scene you want to be considered.

The *Utah Bar Journal* is published monthly 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, \$40.00; 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.

Copyright © 1999 by the Utah State Bar. All rights reserved.

## Letters to the Editor

Dear Editor:

I applaud Michael Hutchings' and Gerald Smith's article on the increasing, but ignored, problem of crime in Utah, especially in areas of rape and larceny. Telling the truth about Utah's low incarceration rate and the resultant increases in crime are truths people do not want to hear.

It is never popular to be a "Jeremiah" whose warnings to ancient Israel went unheeded because they were experiencing material prosperity. Similarly, our state has experienced significant prosperity and politicians and government officials do not want to hear truths which point to unpleasant societal ills. This attitude has resulted in grossly insufficient funding for correctional officer salaries, programs, and prison construction.

However, while it is true that we need to incarcerate more violent felons for longer periods of time, we must also not forget the almost universally-acknowledged root problem of increased crime: the decay of the traditional family. While building prisons on one hand, we need to equally ensure that our laws, rules, policies, and government funding build strong families. The most glaring question posed, however, from the article is, where are the leaders that will boldly tackle these herculean tasks?

Frank D. Mylar, J.D., M.B.A.

## Interested in Writing an Article for the *Bar Journal*?

The editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine.

If you have an article idea or would be interested in writing on a particular topic, contact the editor at 532-1234 or write, *Utah Bar Journal*, 645 South 200 East, Salt Lake City, Utah 84111.

## The Utah Bar Journal

### Published by The Utah State Bar

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

### Bar Journal Committee and Editorial Board

#### Editor

William D. Holyoak

#### Associate Editor

Randall L. Romrell

#### Articles Editor

Blain H. Johnson

#### Letters Editor

Victoria Kidman

### Views from the Bench Editors

G. Kevin Jones

Lorena P. Rizzo

Judge Homer E. Wilkinson

### Legislative Report Editors

Lisa Watts Baskin

Heather Miller

### Case Summaries Editors

Glen A. Cook

J. Craig Smith

Daniel M. Torrence

### Book Review Editors

Betsy L. Ross

Penniann J. Schumann

### "How to . . ." Editor

Annalisa A. Steggell

### Judicial Profiles Editors

Brett J. DelPorto

Jennifer L. Ross

### ADR Editor

Cherie P. Shanteau

### Law and Technology Editors

Bruce R. Findlay

Mark J. Gregersen

David Hartvigsen

### Young Lawyer Representatives

Doug Adair

Cathy E. Roberts

Todd Weiler

### Legal Assistant Representatives

Mary H. Black

Deborah Caleyory

### Committee Members

Tamra Cole

Cameron S. Denning

David B. Erickson

Andrea J. Garland

H. Craig Hall

Sandra K. McDonald

Carolyn Nichols

Kimberly J. Smith

Denver Snuffer

David R. Ward

### Bar Commission Liaison

D. Frank Wilkins

### Bar Staff Liaison

Christine Critchley

## **Letters Submission Guidelines:**

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.
2. No one person shall have more than one letter to the editor published every six months.
3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal* and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.
4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Code of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board

of Commissioners or any employee of the Utah State Bar to civil or criminal liability.

6. No letter shall be published which advocates or opposes a particular candidacy for a political or judicial office or which contains a solicitation or advertisement for a commercial or business purpose.
7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.
8. The Editor, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected.

The Law Firm of

## **PARSONS, DAVIES KINGHORN & PETERS**

A Professional Corporation

Is Pleased to Announce that

### **HAROLD L. REISER**

(Formerly of Jardine, Linebaugh & Dunn)

Has Joined the Firm

Mr. Reiser will continue his practice in the areas of Business, Employment and Health Care Law, Administrative Proceedings, Creditors' Rights and Commercial Litigation.

## **PARSONS, DAVIES KINGHORN & PETERS**

A Professional Corporation

185 South State Street, Suite 700

Salt Lake City, Utah 84111

Telephone: (801) 363-4300

Facsimile: (801) 363-4378

E-mail: attorney@pdkplaw.com

\* \* \*

Civil Litigation and Administrative Proceedings,  
Commercial Transactions, State and Federal Taxation,  
Tax Controversy, Estate Planning, Pension and Profit Sharing,  
Bankruptcy, Creditors' Rights and Business Reorganization,  
Health Care Law, Business Organizations, Employment Law,  
Real Estate, Land Use, Water, Natural Resource and  
Environmental, Regulatory Matters, Local Government, Insurance  
Defense and Domestic Relations

\* \* \*

John Parsons  
Glen E. Davies  
Gerald H. Kinghorn  
Bill Thomas Peters  
Langdon T. Owen, Jr.  
Ken P. Jones

David W. Scofield  
Stuart W. Hinckley  
R. Kimbll Mosier  
Harold L. Reiser  
Katherine S. Gregory  
Paige Bigelow

## Thanks Cal

by James C. Jenkins

Cal Thorpe is an imposing man. In physical stature, he was much larger than most folks. In terms of life's accomplishments, he was also great. Cal was a successful student, scientist, athlete, teacher, counselor, husband and father, businessman, citizen, volunteer, and much more; and, he had a big heart.

We have all been shocked to learn that on Saturday, March 6, 1999, Cal and his wife, Pat, while returning home from the mid-year meeting in St. George, were both killed in a traffic accident near Nephi. They had gone to St. George to make sure there were pictures of the mid-year meeting for the next *Bar Journal*. I had last spoken with Cal after the Friday night dinner at the Dixie Convention Center. Our topic was one of his favorites – the *Utah Bar Journal*.

For over 10 years, Calvin E. Thorpe has been editor of the *Bar Journal*. Largely at his direction, the *Bar Journal* has been the voice of the Utah State Bar. It is published nearly every month,

and it is recognized not only in Utah, but nationally as a quality professional publication. Cal would not have had it any other way. He dedicated hours every month to assure the quality of the *Bar Journal*, and its quality is even more impressive when one considers that the *Bar Journal* is produced by a committee of unpaid volunteers.

Each of us can thank Cal for this continuing and tangible way of identifying with our profession – the *Utah Bar Journal*. He has left big shoes to fill; he will be missed.



# *In Memory of Calvin E. ("Cal") Thorpe*

## *1938-1999*

Cal Thorpe, the editor of the *Utah Bar Journal* and a partner in the law firm of Thorpe, North & Western died in an auto accident on Saturday, March 6th. He was returning home from the Mid-year Bar meeting in St. George. He will be missed terribly by those fortunate enough to know him.

Cal was raised in Springville and attended Springville High School. His name is in the school's basketball Hall of Fame. Throughout his life he remained connected to Springville. He continued to return there to cheer on the Springville High School teams, having attended his last game there a few days prior to his death.

Cal earned a bachelor's degree in physics from Brigham Young University, where he also played basketball. He went on to earn a Master of Science degree at the University of Pennsylvania. He completed a graduate study program at Bell Telephone Laboratories before earning his law degree at Seton Hall University. He was a founding member of Thorpe, North & Western and was a member of the U.S. Patent Bar.

His personal interest in basketball continued as an adult. He coached youth basketball teams and played regularly with ward teams. He volunteered to serve as coach and player which allowed him to decide when he went out of a game. As a coach he rarely put himself out, but fouls often took care of that for him.

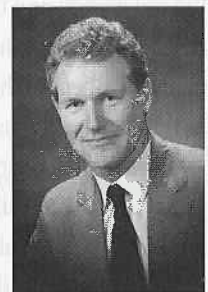
He contributed to his community and wanted to see orderly development. He helped found the Sandy City Chamber of Commerce and served as its chairman. He received the Sandy Total Citizen Award and was a member of the Sandy City Planning Commission. His service on the Planning Commission lasted for nine years, which included tenure as Chairman. He was instrumental in community planning, in the community transportation plan and in drafting sign ordinances for Sandy City. He received the Citizen Planner Award, and was a member of Sandy City's first beautification committee. He served for eight years as a director of the Salt Lake Metropolitan Water Board, having been appointed to that position by Sandy City. Sandy City Mayor Tom Dolan said about Cal: "He was one of the modern day founders of what Sandy City is today. He helped immensely to move the city ahead. He was an advisor to former mayors and myself. He was irreplaceable. He will be greatly missed."

Cal was an adjunct professor for the University of Utah, where he organized and taught a class in intellectual property law for engineers and scientists. He also taught at Brigham Young University.

Members of the Bar know him best for his work as editor of the *Bar Journal*. Cal served as a member of the *Journal* committee for 16 years, including 11 years as editor. Randy Romrell, associate editor and one of the founders of the *Bar Journal* in 1973, recalls the following about Cal's leadership:

"Immediately after he assumed the role of editor, Cal significantly increased the size and involvement of the committee. This committee spent many hours in meetings in the former bar offices discussing the mission of the *Journal*, and the goals and objectives we should pursue. In law school I had written a paper about the purpose of bar journals, based on comprehensive study I had done of other states' journals. At the initial meeting, Cal distributed a copy of my paper to the committee and brought a sampling of journals for us to consider. It was important to him that we draw on the experience of other states, blended with our own good ideas, in producing the best and most helpful publication we possibly could.

He had a gift for encouraging discussion and participation of all the members. With tact and humor he skillfully led the group to a consensus, made assignments, and followed up. The result was an attractive 8½ x 11 format, new layout, new cover design (featuring photographs of Utah scenes taken by members of the Utah Bar), and an entirely new direction in terms of articles, departments, and features. Cal was a champion of the practical, how-to-do-it articles, as opposed to the more esoteric articles found in traditional law reviews. He was always on a quest for excellence and improvement, as evidenced by the updated journal design introduced last year. Under Cal's leadership the *Journal* has become a publication of which we may all be justly proud, probably the best of any of the states. And for those of us who have been privileged to work closely with him, he made it a lot a fun!"



Under his leadership the publication increased in quality, content and circulation. His leadership and influence among members of the *Bar Journal* staff and committee gained him respect and appreciation while he served which makes this loss all the greater. He carried the responsibilities as editor with a grace and nonchalance that belied the effort it took. Under his direction, despite the pressures of meeting monthly deadlines, the committee functioned in a congenial and efficient joint effort. There was never any bickering or dispute despite the opportunity this pressure afforded the strong personalities involved in the effort. The focus on the job to be done and the friendly way in which it all got done was because of Cal's guiding hand.

As Bar President James C. Jenkins put it: "Cal was extremely dedicated to the *Bar Journal*. He was a 'hands-on' editor. He was protective of the publication, including its cover and each article. He kept a close eye on how it fit together each month. He met frequently each month with the *Bar Journal* staff and committee to make the publication work. And it is all the more remarkable because his service was voluntary and unpaid. It will be extremely difficult for anyone to measure up to Cal's dedication to the *Journal*, the Committee and the Bar."

Cal was always interested in the individual. He would frequently inquire about how you were doing, how your family was, or how a particular child was doing. And he meant it. He was genuinely concerned about people and loved serving the youth of his church ward. He would often take teenagers aside, listen carefully to them, and offer his assistance. He got their attention. He earned their respect. He gave them the benefit of his considerable wisdom, which oftentimes involved just listening. But he could also be a skilled interviewer and had a tendency to ask disarming questions that penetrated to the heart of the matter. This was true when guiding youth, when addressing friends, when serving in Church responsibilities and when practicing law.

Cal also had a sense of humor. Maud Thurman, Bar staff liaison for the *Bar Journal*, commented on Cal's humor: "He loved to tease. He did it 'tongue in cheek' and I think some misunderstood that. I would say: 'Here comes the king, let me roll out the red carpet' and Cal would say 'Alright, I'll step back and wait for you to get that done.' He had the gift of gab, knew so many members of the community, and kept up on their lives. He also liked playing matchmaker. Single young women would be told by Cal that a particular young man was interested in her and was going to call her. Then he would call the young man and ask if he had called her. He would explain that she was expecting him to call and that he had better do it or it would

make Cal look bad. Cal attended more than a few weddings that he had originally set in motion."

Former Judge Michael Hutchings recalled an incident involving his own son. Cal and Judge Hutchings were in the same church ward. Judge Hutchings' son had declined an advancement in the priesthood to the surprise and consternation of his parents. After several months of concern and quiet nudging of the son, he finally indicated his willingness to go forward with the advancement. Just after this, Cal mentioned to Judge Hutchings how appreciative he was that his son had finished the basketball season with his quorum instead of advancing to another quorum and team. Judge Hutchings, upon learning of Cal's contribution to this delay in priesthood advancement, asked Cal if he thought it was right to delay such an event for basketball. Cal responded: "You have to iron your priorities out. Which is more important, priesthood advancement or winning a basketball tournament?"

After *Bar Journal* committee meetings, on more than one occasion, he would inspect Denver Snuffer's Harley Davidson as he contemplated the necessity of acquiring one himself. He wondered if his Pepperwood neighbors would object to another noisy machine rumbling through the neighborhood. After being reminded there were judges who rode Harleys, Cal responded: "Yes, but judges don't worry about being good neighbors."

He was given a baseball cap by grateful young men he had coached, with "CAL" inscribed on it. He appreciated that they had taken the time to get his name inscribed on it. When told it was from the University of California at Berkley, he said: "Well, I'm willing to share my name with them."

Cal was a consummate professional. He specialized in patents involving electrical engineering. His clients included Sarcos Inc. and Evans & Sutherland Computer Corp. When asked about being a partner with Cal, Wayne Western said: "We were together for over twenty years. It was wonderful. I trusted him. I never checked up on him or had to check on him. I never questioned what he did, he pulled his share and we 'shared and shared alike' as partners. He was trusted and trusting of others." Commenting on Cal's personal traits, Wayne observed: "He had a sense of humor you just had to know. Cal was the most unique person I have ever met. He was one of a kind. Just like Frank Sinatra, he did it his way."

His work as a patent attorney required careful drafting and editing. Wayne Western commented that "Cal loved to edit things. He would go through a junior associates' best work and



