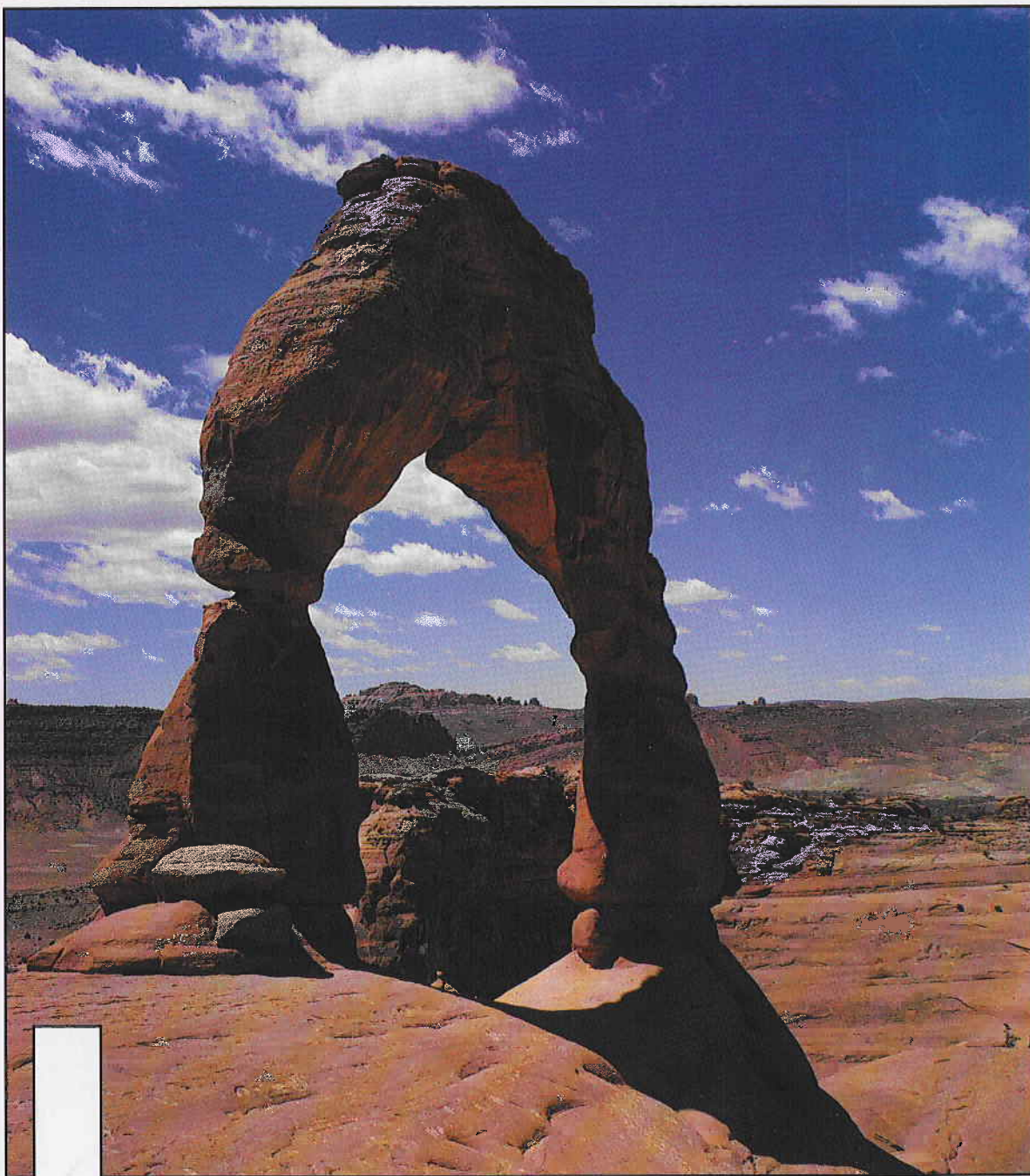


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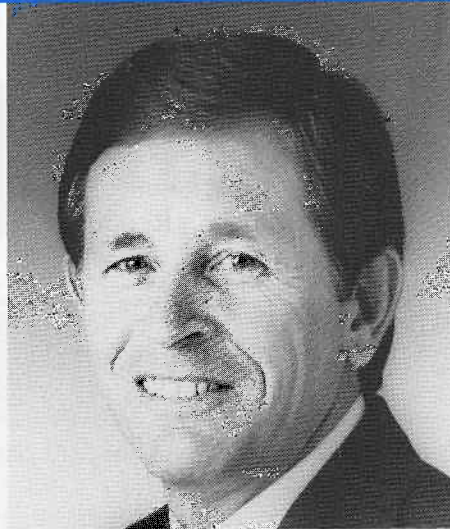
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COVER: Delicate Arch, Moab, Utah, taken by Randy L. Dryer, a partner in Parsons, Behle & Latimer.

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Justice For All and All For Justice — A Call to Action

By Randy L. Dryer

We recently celebrated Law Day with a series of day long activities sponsored by the Bar's Law Day/Law Related Education Committees. Although the inclement weather had an adverse impact on the attendance, the activities were excellent and the organizers are to be commended. As part of the celebration, I had the opportunity to give an address which was published in the Intermountain Commercial Record. The subject bears repeating in this space.

Law Day is a time to pay tribute to our Constitution and our system of justice. A constitution and system which is unparalleled in human existence in its recognition and protection of individual freedoms and liberties. Law Day is also a time to pause and reflect on whether our justice system is still, after 200 years, fulfilling the greatest constitutional principle — equal justice for all. From this observer's perspective, the answer to this latter inquiry is a qualified yes; qualified by the concern that the ever growing pressures on the justice system, perhaps felt greater elsewhere than in Utah, threaten to render equal justice for all a hollow principle.

OUR ENDURING CONSTITUTION

Few things endure 200 plus years. No other Constitution has lasted as long as ours. Nearly two-thirds of the world's 160 nation constitutions have been adopted or revised since 1970 and only 14 pre-date World War II. It has been calculated that 53% of the independent states of the world have been under more than one constitution since the second world war. The average nation has had two constitutions since 1945 and two states, Syria and Thailand, have each had nine constitutions over the past 40 years. These figures dramatically illustrate the precarious existence of any constitution. By these standards, the Constitution of the United States has proven remarkably durable. The genius of the United States Constitution lies not in its eloquent description of fundamental principles, such as due process, freedom of speech and equal justice for all, but in its creation of the machinery to translate these constitutional principles into constitutional reality. At the heart of that machinery is our justice system. It is our justice system, in general, and judges and lawyers, in particular, which protects and preserves our cherished freedoms and affords a forum for the peaceful

resolution of conflict.

THE PROMISE OF JUSTICE FOR ALL

The concept of "justice for all" permeates virtually every significant early legal document — from the Constitution to the Pledge of Allegiance. The preamble to the Constitution cites the establishment of justice as one of the major purposes for the formation of a new national government. The Fourteenth Amendment guarantees equal protection of the laws. And generations of Americans have begun their school day standing to recite the Pledge of Allegiance which concludes by promising "justice for all."

In an effort to guarantee justice for all, our nation has created an ever expanding system of laws and rights for the enjoyment of society. To ensure the protection of these liberties from an over zealous government and from each other and to assure the ability to redress any encroachment of one's rights, we have created a system of justice that mandates fairness and impartial hearing. As our population expanded, our justice system expanded as well, adding jurisdictions at the federal,

state, county and local levels. Today, each of the numerous jurisdictions contain many elements, including courts, law enforcement, public defenders, civil legal services, prosecutors, corrections and guardian *ad litem* programs.

By most objective standards, America's effort to establish justice for all has been a success. Our justice system has protected society against lawlessness and chaos; extended the rights and guarantees of the Constitution and Bill of Rights to those previously excluded because of race, religion or gender; and, provided a system allowing the free exercise of commerce without unfair burdens. Other nations have viewed our justice system with considerable envy. We see the newly emerging democracies of central and eastern Europe looking to our system as a model to ensure fairness and due process in their now open societies. Indeed, our Constitution has become our most significant export. As Venezuelan Ambassador Enrique Tejera Paris once remarked, "In a dogmatic world, the U.S. Constitution [and by implication its justice system] is still regarded as the greatest of dogmas".

THE JUSTICE SYSTEM UNDER SIEGE

Unfortunately, the American justice system is today under siege and its very existence is threatened as never before. This threat arises not from a foreign power nor through an authoritarian domestic regime. The justice system, and the notion of "justice for all" is threatened on a variety of fronts.

First, the dramatic increase in the number of criminal cases being processed through the system, particularly drug prosecutions, has strained available resources almost to a breaking point. The flood of criminal prosecutions has resulted in a virtual shut down of the civil justice system in many jurisdictions. In 1992, the civil jury system was actually shut down for all or part of the year in ten states. The delay for a civil trial in certain metropolitan areas like Philadelphia and Los Angeles is now 5 years. In three of the four divisions in the Northern District of Florida, not a single civil case has been tried before a jury since May 1989. Stepped-up enforcement efforts in the war on drugs, new legislation and an increasingly complicated regulatory environment all result in

more cases to be processed through the system. A single example illustrates the problem. Congress, in response to the public cry for tougher sentences for criminals, greatly reduced the sentencing discretion of federal judges and required the imposition of minimum — mandatory sentences for certain types of crimes. One unanticipated result has been that more and more cases are being tried and not resolved by plea bargain since much of the incentive for a plea has now been eliminated.

Second, the increased workload on the state justice system has been met not with a concomitant increase in resources, but with a dramatic decrease in funding as more and more states experience budgetary shortfalls. In 1991-1992, 35 states cut their budget for the judiciary despite the increased pressures on the system. The crisis in funding became so severe in nine states that litigation was commenced to address the lack of funding. The most celebrated action involved the state of New York, where the chief justice of the state sued Governor Cuomo and the legislature over cuts in the budget for the courts. The lawsuit was eventually settled out of court with substantial funds being restored to the judiciary's budget. Fortunately, the Utah legislature has been more responsive to the funding needs of our state courts, but the judiciary has not gone untouched by budgetary pressures. For example, the Judiciary requested funding for 18 additional juvenile probation officers due to the dramatic increase in the number of juvenile offenders. The legislature appropriated no funds. The Judiciary also sought \$1.4 million to increase courtroom security and received no funds. On the federal level, the situation is only slightly better. The total budget for the federal court system is less than 1/10 of 1% of the federal budget.

Last fall, Congress allocated 13% less in funds to the judicial branch than the Judicial Conference of the United States had requested for fiscal year 1993. The budget cuts threaten funding for many areas and programs, including counsel for indigent parties and civil jury trials.

Third, the increasing cost of litigation has denied effective access to the indigent and much of middle America. Studies demonstrate that little more than 20% of the legal needs of the poor are met each year. The American Lawyer magazine recently devoted an entire issue to a special report documenting the lack of criminal represen-

tation for indigents. The high costs of litigation burden everyone. Our businesses spend too much on legal expenses at a time when they are confronted with increasingly intense global competition. Business passes on these costs to consumers, who then pay unnecessarily high prices for the products and services they buy. Even for those who can afford litigation the delay alone can have tremendous adverse consequences.

ABA President Michael McWilliams recently stated that, "America is in the throes of a justice deficit — because ours has become a system of justice without equal access to it; without adequate representation within it; and without sufficient and balanced funding for it." While President McWilliams' statement may seem somewhat overstated to those of us in Utah where the system is relatively healthy, it unfortunately portrays an accurate picture in many parts of the country.

A CALL TO ACTION

Who is responsible for the current crisis in our justice system? Is it lawyers who file too many frivolous claims and prolong litigation once commenced? Is it legislators who pass too many new laws, demand tougher prosecution for crime and then underfund the system? Is it runaway juries who grant mega verdicts to plaintiffs which in turn encourages the general public to seek litigation as the first and not the last resort? Or is it a system that places too much emphasis on rights and not enough on responsibilities? Who is to blame is not really important and now is not the time for finger pointing. What is important is that we, as a nation, deal with this serious crisis in the third branch of government. Justice for all is not merely the responsibility of lawyers or judges or of congress or state legislators. All Americans lawyer and non-lawyer alike, have the responsibility of fulfilling this constitutional promise. Unfortunately, we can no longer have justice for all in this country until we have all for justice. Until we have a broad base, national commitment to adequately fund the justice system, the promise of justice for all in our Pledge of Allegiance will ring hollow for our children and future generations. Fortunately, there are signs that the crisis is being addressed. The American Bar Association has designated its theme for 1993 as "Justice for All

— All for Justice”. The rhetoric of lawyer bashing so prominent during the Bush administration has now subsided with the change in power in the executive branch. Finger pointing has lessened and efforts are underway to constructively address the situation. Special government and citizen task forces throughout the country such as the Brookings Institute and others have been formed to find solutions. The movement toward meaningful procedural reform in our civil system has gained steam and the next few years will see significant revisions in our judicial procedures and policies. We are now beginning to see the fruits of the Civil Jus-

tice Reform Act, enacted in 1990, which requires federal district courts to implement specific expense and delay reduction plans by the end of 1993. More and more companies and individuals are turning toward alternative dispute resolution methods of solving conflicts such as arbitration, conciliation and mediation. Utah’s Federal Court has implemented a court run ADR program to give parties a quicker and less expensive alternative to traditional legislation. Nationwide, the movement to establish ADR programs has become a veritable avalanche.

George Will said that the business of America is neither business nor war. The business of America is justice and securing

the blessings of liberty. All of us need to make that business of America our personal business. Every American must be persuaded that the justice system is theirs, that it protects their lives from injury, their rights from violation and their property from harm. We must encourage and convince all Americans from all walks of life to join in this effort to support our justice system so as to ensure that the liberties and benefits we have enjoyed for over 200 years continue for our children. We simply cannot let “justice for all” become an eloquent, but empty phrase.

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