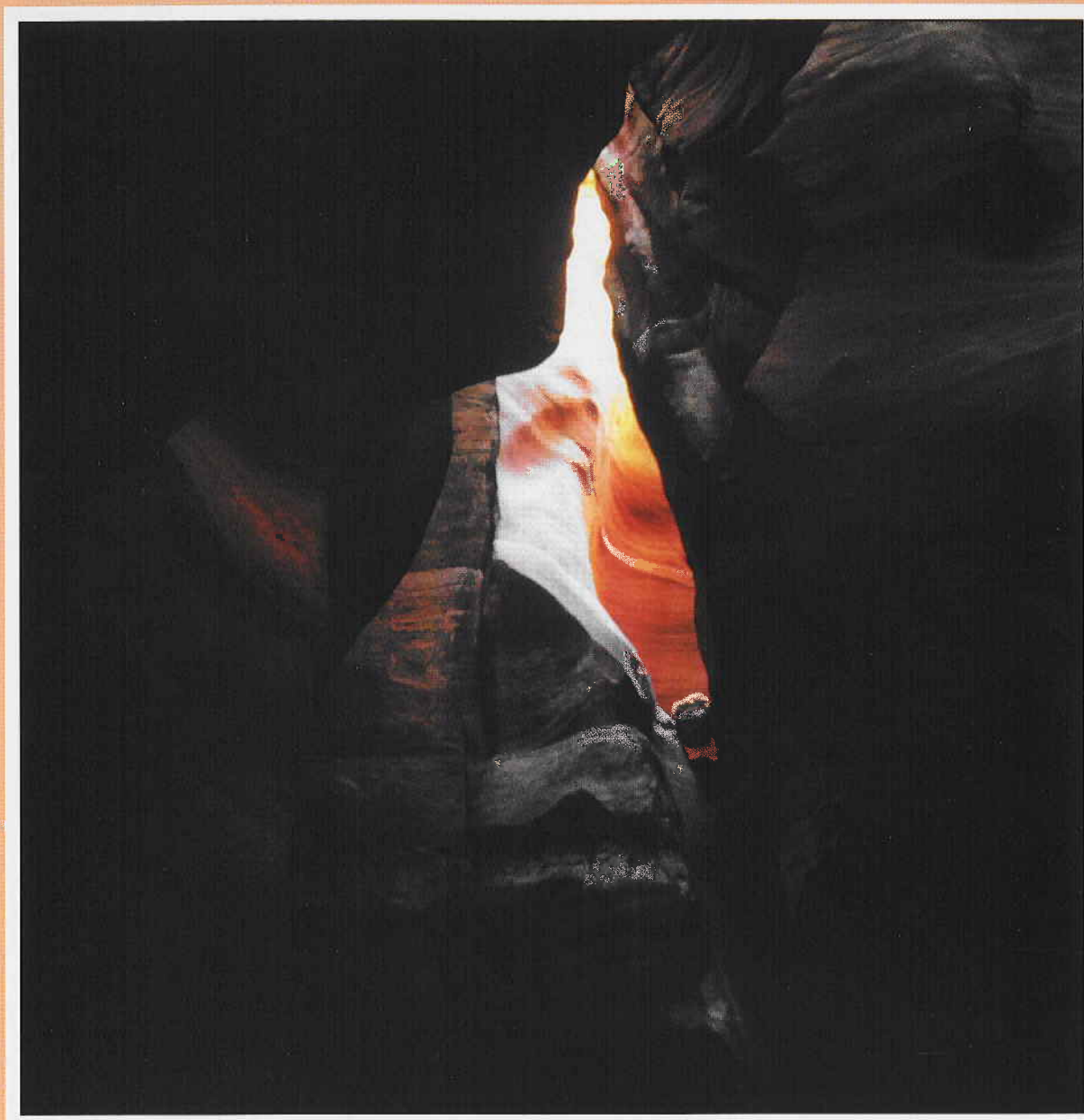


UTAH BAR JOURNAL

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COVER: Fry Canyon, Utah by Gordon J. Swenson, Esq. of Anderson & Holland.

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Dear Editor:

"Punitive Damages: A Suggestion for Change" by Moab attorney, Stephen Russell, may have overlooked an important consideration. UCA, Section 78-18-1 (3), which became effective five years ago, on May 1, 1989, provides as follows:

In any judgment where punitive damages are awarded and paid, 50% of the amount of the punitive damages in excess of \$20,000.00 shall, after payment of attorneys' fees and costs, be remitted to the state treasurer for deposit into the General Fund.

It is only "after" the victim of the wrongful conduct has been compensated for the injustices imposed on him that this

statute attempts to give Utah's General Fund a lion's share of the punitive damages "awarded and paid". Amendment V of The United States Constitution prohibits "private property be taken for public use without just compensation".

Colorado Revised Statutes Annotated, Section 13-21-102 (4) was very similar to UCA, Section 78-18-1 (3). The Colorado statute provided that "One-third of all reasonable damages collected pursuant to this section shall be paid into the state general fund". Applying the standards established by U.S.C.A. Const. Amends. 5 and 14, the Supreme Court of Colorado, in *Kirk v. Denver Pub. Co.*, 818 P.2d 262 (Colo. 1991), held that state's statute unconstitutional. The Court concluded, at page 273, that

CRSA, section 13-21-102 (4) constitutes a taking of a judgment creditor's private property interest in an exemplary damages award without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution . . .

Before we start divvying up our clients' property rights, as suggested by Mr. Russell's article, let us at least measure those rights by simple constitutional principles.

H. Deloyd Bailey, Esq.

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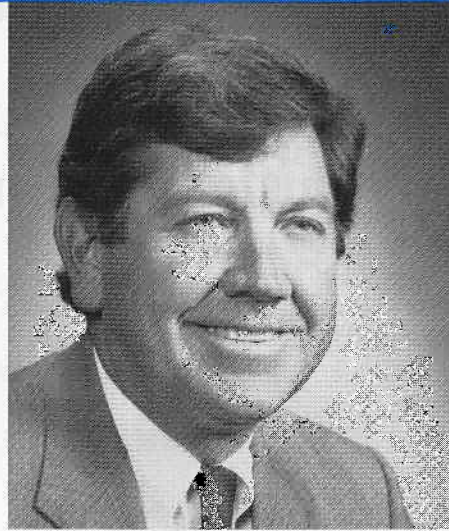
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The Last (Printed) Hurrah!

By H. James Clegg

Well, Moxley (finally) returned from the depths of the Indian Ocean and the heights of the Himalayas, professing newfound energy, dedication and vision. Taking this as a welcome cue, yours truly is fitting him to harness and preparing to become an ex-officio "consultant". A good word, consultant; in fact, a fine word!

It has been a memorable five years, ten months and seventeen days since I joined the Bar Commission. I was wise enough to know that I was at the end of my troubles; I was dumb enough not to recognize which end. Just as well, as it turned out.

The best thing about bar activity is the great folks you meet and work with. Commissioners, committeemen (and women), task forcers, section leadership and staffers have all been great to know and, together, we have accomplished a great deal.

Gayle McKeachnie and Mike Hansen will be leaving the Commission this July. Both have been enthusiastic, hard-working and effective. They will be much missed. The Commission will also have to live without the likes of Jim Davis and Randy Dryer; Jim's ascension to the bench was alleged to compromise his loyalty to the Bar as its delegate to the Judicial Council. Not true; those who know Davis realize that *nothing* compromises his loyalty to the Bar. Dryer will be designated our international ambassador and we will have a flood of applications for sister-bar status. We are processing Lillejammer's application now.

It was my good fortune to have lived as neighbor, at different times, to Scott Matheson and Norm Bangerter before they became governors. This provided considerable warmth and trust, I believe, when I met later with them concerning Bar issues. I did

not have the benefit of a prior relationship with Governor Leavitt. In all truth, in our meetings he was cordial, logical, thoughtful and most considerate. While we did not always agree (perhaps I wasn't a very good advocate on the issues of appointment of judges), we understood and respected the other's point of view and became sensitive to considerations pulling in both directions. He is either a good statesman or a great politician, or (if it is possible) both.

We are looking forward to a great Annual Meeting in Sun Valley. I hope you will all make the effort to attend; we are certainly making the effort to make it worth your while.

