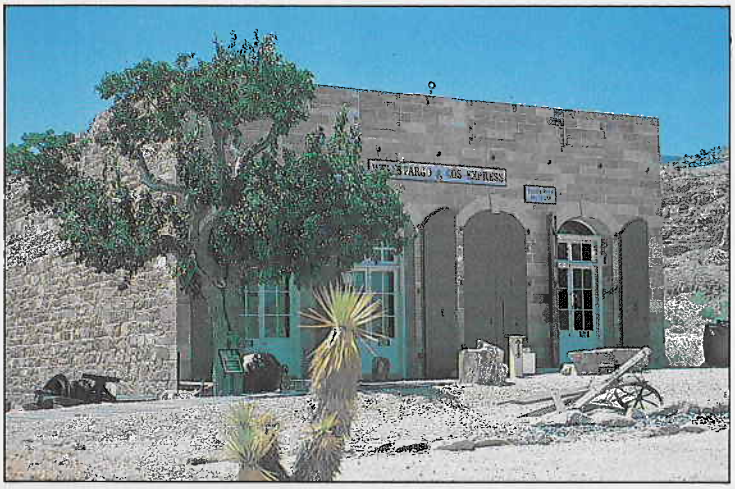
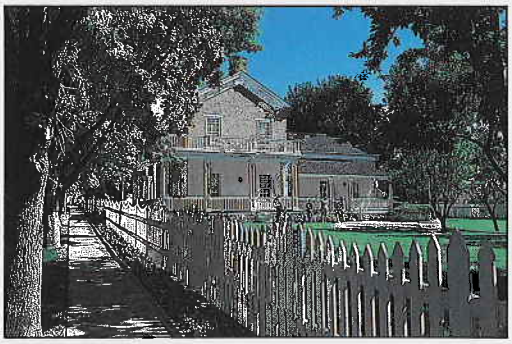
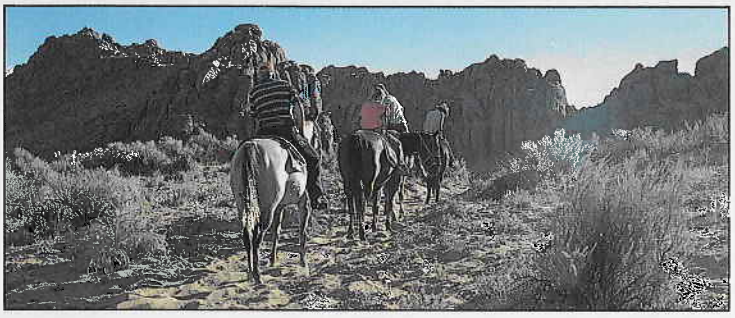
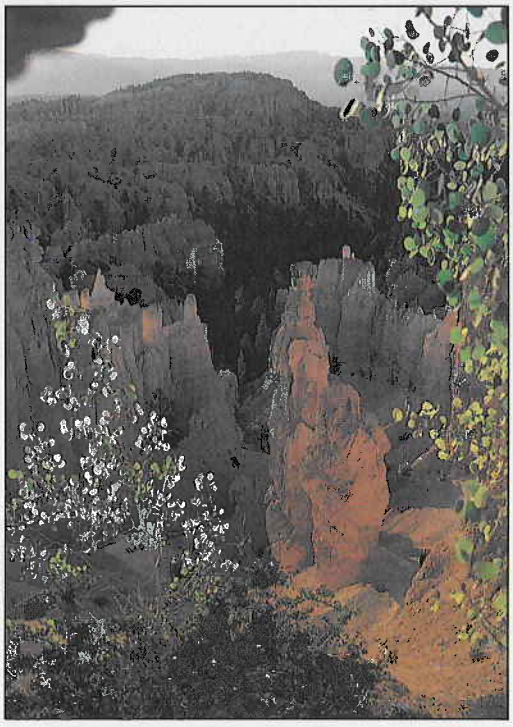
UTAH BAR JOURNAL

Vol. 2, No. 3 March 1989









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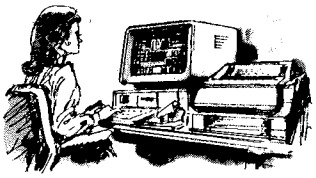

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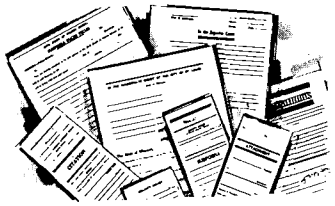

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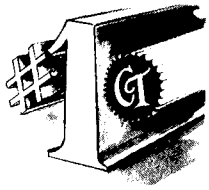

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LETTERS

Editor:

Judge Owens (Robert F. Owens, "The Case Against Plea Bargaining," November 1988) addresses a very real problem concerning the public perception about plea bargaining and some very real problems with that practice itself. However, I differ with some of the judge's observations.

I wonder if a good deal of the problem with the public misconception about plea bargaining isn't lawyers' faults, not, as the judge suggests, because a good case can't be made, but because a significant number of lawyers demagogue about this practice to the press and at public gatherings. How often has plea bargaining abuse been the political battle cry of someone seeking to be elected as a prosecutor and, when elected, there is no appreciable diminution in the practice in that office because the candidate knew there was no significant problem to begin with?!

Now, referring directly to the article, under the heading "Backroom Justice" is the statement that neither the prosecutors nor the defense attorneys have been elected or appointed by the people to make the decisions of guilt or innocence for society. The article goes on to explain that a judge is elected and trained to make those decisions or a jury, of course, should do so. This raises the question: How is a judge more elected than a prosecutor? Judges in Utah are appointed by an elected governor. . .are judges more trained than prosecutors or defense attorneys? The article then objects to appellate review being cut out by the process. But isn't the lack of need for appellate review an asset rather than a deficit?

The third objection in the article is that this "critical decision as to what a defendant is guilty of, if anything, and how serious it is, is made in the minds of two lawyers who privately reach agreement with each other." This is just not the case. There is a third mind that is critical; it's the accused. He knows better than any jury or judge what really happened. While the concerns raised about the pressures on him from his attorney are real, that seems a small negative compared to the opportunity to make that decision for himself. Are judges and juries needed to protect the accused from his own attorney? What a strange idea!

The final suggestion of the article I would like to take exception to is that the prosecution should only offer a bargain if there are problems proving his case. If that were the standard, could defense council ever recommend accepting an offer knowing that the prosecution has acknowledged such a weakness?

I acknowledge every weakness and concern expressed by Judge Owens that exists in the system; we can do better and should. Both sides in the criminal justice system with the reminding of the bench need to be more alert and diligent in avoiding those pitfalls. However, I don't believe these personal weaknesses and indiscretions are systematic. The system or practice is sound; the participants are its weakness and the weakness of any system.

More trials will not make better justice.

Don Sperry Redd
Attorney at Law
Layton, Utah

Editor:

While the new *Utah Bar Journal* has the trappings of a more professionally done publication than the old *Bar Letter*, I offer a couple of criticisms:

1. Timeliness. The December edition of the *UBJ* reported the minutes of the September 23 Commission meeting. The two-and-a-half- to three-month delay makes much information outdated, i.e., the November *UBJ* acclaimed Chris Fuller as Young Lawyer of the Year and reported that he was at a firm which he had, in fact, left *three months* earlier.

2. Format. The Discipline Corner is buried within the "State Bar News," this month languishing on a page headed by "Partnership Diskettes." Discipline should be the Bar's most important function and deserves separate, unequal treatment. Re: Ethics Opinion 90—All prior state ethics opinions have been real legal opinions, with rationale and citations. It is odd that this highly debated issue is reduced to a "minute entry" opinion. It deserves more.

On a matter of content, I note that the Bar has filed an *amicus* brief on behalf of the Wisconsin Bar, which does not want to lose its integrated status. Such an act is equivalent to legislative lobbying, for which the Bar has been criticized, prompting, I believe, its substantial curtailment until the Utah Supreme Court decides the matter, a Bar member having formally challenged such lobbying. The concern is that in an integrated Bar, neither dues nor association name should be used to pursue public action and legislative goals that are not supported by *all* members. It seems inappropriate for our Bar to have "lobbied" the Seventh Circuit Court of Appeals in this matter, where many Utah lawyers supported the deintegration decision rendered by the district court, a decision, incidentally, now reversed.

Jo Carol Nesset-Sale

The staff of the Utah Bar Journal *realizes timeliness is a problem. But since we must work within deadlines, the problem, for the most part, is beyond our control. To illustrate why the minutes of the September 23 Bar Commission meeting were in the December issue (and why minutes will always appear in an issue two months later): When the September 23 meeting was held, the October issue of the* Journal *was already at the printer. The* Journal *committee had already met (about a week prior) to plan the November issue and the deadline for the November issue had passed for all materials except classified ads. When the* Bar Journal *Committee received the minutes of the September 23 meeting, it was the middle of October and the time of the planning meeting for the December issue. If the Bar Commissioners were to meet at the beginning of the month and get minutes to the* Journal *by the 15th of the month, the news of that meeting could appear in a month-earlier issue than is now possible. The* Bar Journal *staff, however, does not schedule the Commissioners' meetings.*

As to comments on format: The format of the Journal *is new and far from perfect, but we're working on it and, hopefully, improvements will continue.*

Editor

LETTERS *(continued on page 32*

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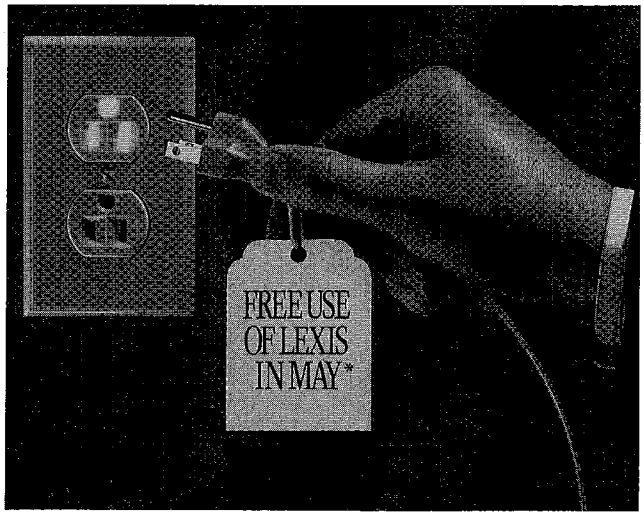

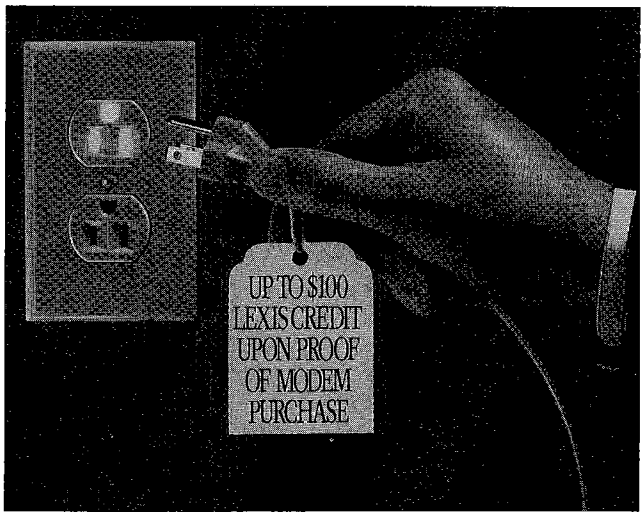

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