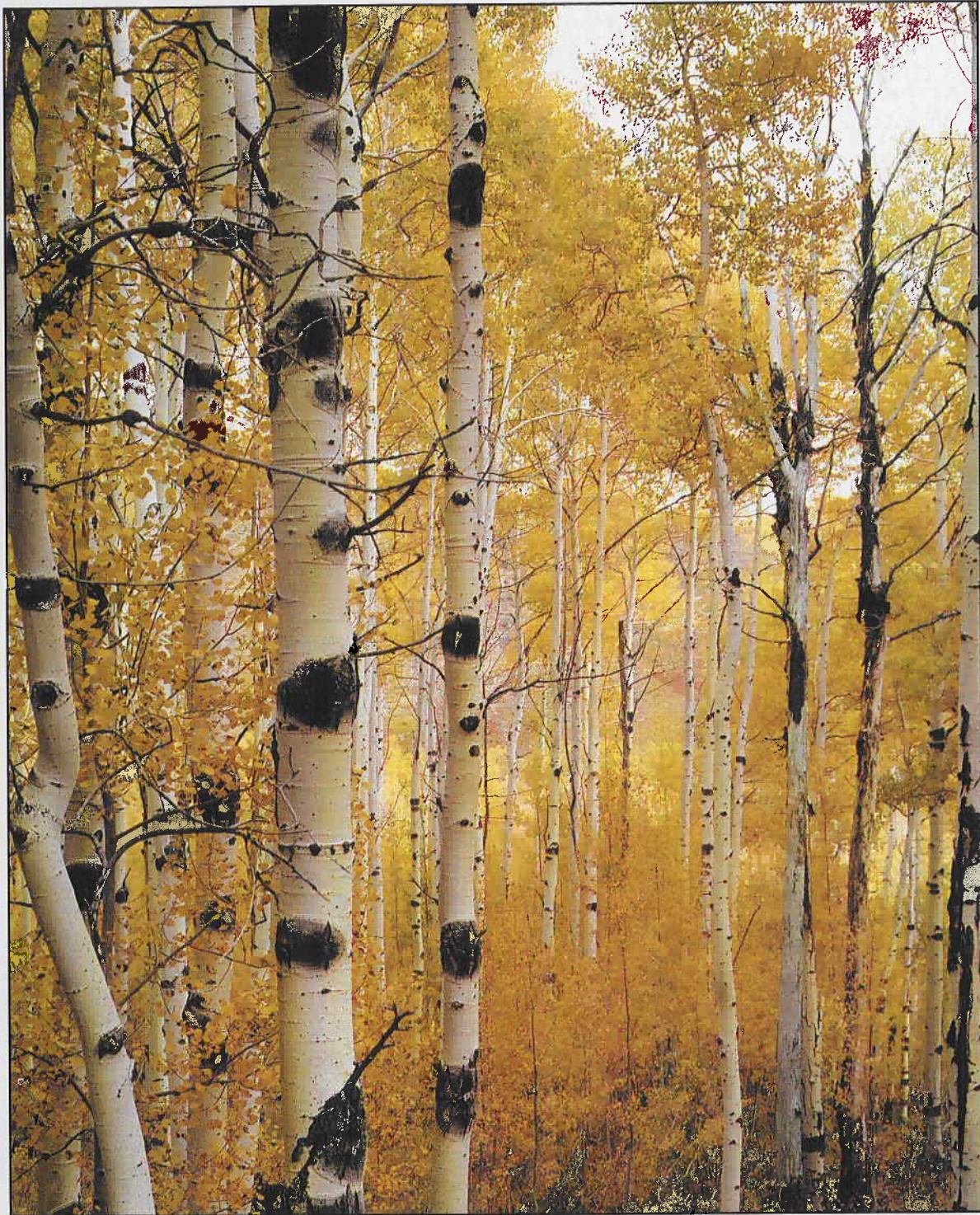


UTAH BAR JOURNAL

Vol. 7 No. 8

October 1994



Collector's Issue



Utah Standards of Appellate Review

9

ADMINISTRATOR SHERMA HEMINGWAY KNOWS WHERE TO CONNECT FOR HIGH-END MITA COPIERS.



“When the caseload at our law firm overwhelmed the Mita copier we had just purchased, UBS replaced it with no questions asked. When they say total satisfaction, they really mean it.”



These days Watkiss Dunning & Watkiss is far too busy to worry about their copier. Initially, the newly-formed law firm selected a Mita copier from Uinta Business Systems that easily met their needs. But when an unexplained technical problem occurred after moving to a new office building, UBS really bent over backwards to satisfy their client by replacing the copier with the higher end Mita 7090 model. Thanks, in part, to the UBS Three-Year-Total-Satisfaction-Guarantee and the Mita Customer Assurance Plan. And to the UBS commitment for high quality service that goes way beyond the sale. To find out what UBS can do to satisfy all your business systems needs, call 461-7600.



Published by The Utah State Bar
 645 South 200 East
 Salt Lake City, Utah 84111
 Telephone (801) 531-9077

President

Paul T. Moxley

President-Elect

Dennis V. Haslam

Executive Director

John C. Baldwin

**Bar Journal Committee
 and Editorial Board**

Editor

Calvin E. Thorpe

Associate Editors

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

Articles Editors

David Brown
 Christopher Burke
 Lee S. McCullough
 Derek Pullan

Letters Editor

Victoria Kidman

Views from the Bench Editors

Judge Michael L. Hutchings
 Judge Stephen VanDyke

Legislative Report Editors

Stephen K. Christiansen
 Lisa Watts Baskin

Case Summaries Editors

Scott A. Hagen
 Clark R. Nielsen

Book Review Editor

Betsy L. Ross

"How to . . ." Editors

Brad Betebenner
 David Hartvigsen
 Patrick Hendrickson

ADR Editor

Cherie P. Shanteau

Law and Technology Editor

R. Bruce Findlay

Glen Cook
 David Erickson
 Thomas Jepperson
 J. Craig Smith
 Denver Snuffer
 Barrie Vernon
 Judge Homer Wilkinson

UTAH BAR JOURNAL

Vol. 7 No. 8

October 1994

President's Message4
by Paul T. Moxley

Commissioner's Report6
by David Nuffer

Utah Standards of Appellate Review9
by Judge Norman H. Jackson

State Bar News.....39

Utah Bar Foundation.....49

CLE Calendar.....50

Classified Ads51

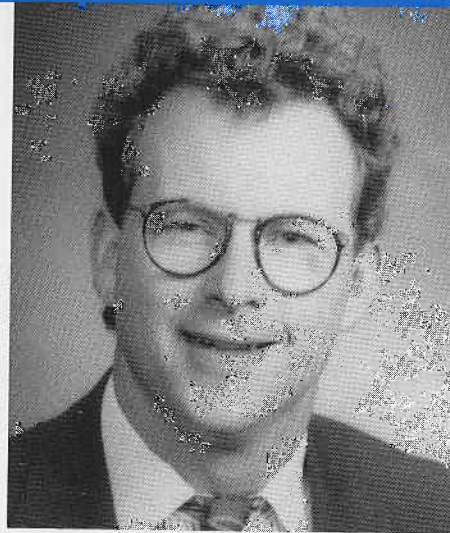
COVER: Quaking Aspens in Snyderville, Utah, taken by John Preston Creer, Esq. of Salt Lake City.

Members of the Utah 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, Associate General Counsel, Huntsman Chemical Corporation, 2000 Eagle Gate Tower, Salt Lake City, Utah, 84111, 532-5200. Send both the slide, transparency or print of each photograph you want to be considered.

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.

Copyright © 1994 by the Utah State Bar. All rights reserved.



The Court, The Law School, or The Bar Just Who Is Responsible for Lawyer Competency!

By Paul T. Moxley

Last fall I attended an ABA Standing Committee Conference on Lawyer Competence in Jackson Hole, Wyoming. Others attending included the chief justices, law school deans, bar presidents and other leaders from Hawaii, Idaho, Montana, North & South Dakota, Utah, and Wyoming. The purpose of the conference was to explore how we can work together to ensure competency in the legal profession.

While each state faces different challenges and opportunities, all present agreed that we need to open and institutionalize the lines of communication between the court, law school, and bar in order to build understanding and trust, and work toward the common goal of bettering our profession and serving the public.

Provocative questions of debate included:

When should individuals with bad moral character or fitness be screened out (at the law school or bar admission stage)?

Should law schools be preparing students to pass the bar exam or practice law?

When should practice management

skills be taught?

What function does the bar examination serve (does it truly measure competence; is it more a rite of passage; is it just a way to limit the number entering into the profession)?

How can we ensure that lawyers remain competent in the areas of substantive law, practice management and emotional well-being?

We learned about successful programs in other states such as New Mexico's law student/attorney mentor program that exposes students to the real world of practice; Virginia's mandatory professionalism course for new admittees to the bar; and Arizona's diversion program in which genuine attempts are made to rehabilitate disciplinary offenders for the good of the individual attorney, profession, and public.

We tried to define what it means to deliver "quality" legal service, and determined that, like all other businesses, quality is defined by client satisfaction.

While we have traditionally viewed lawyer competence in terms of some minimum threshold of substantive legal knowledge, the vast majority of disciplinary complaints and malpractice suits have more

to do with client satisfaction (e.g. not answering telephone calls, minor neglect, fees disputes), which in turn defines the quality of legal services rendered. This being the case, the attorneys would do well to sharpen their practice management and client relations skills.

Following the conference several states that participated in the ABA Conference have concluded similar conferences focusing on the same questions, and good results were announced at the Annual Meeting of the ABA in New Orleans in August, 1994. In a polite sort of way, the ABA wants states to adopt a quality control committee which will study these issues and guide us towards developing greater competence.

Most lawyers would agree that what they learned in law school contributed little to their ability to practice law. When being a lawyer was more of being a professional as opposed to a generator of billable hours and receipts, etc., experienced lawyers took more of an interest in developing young lawyers, whether they had an office relationship or not. When I started practicing law in 1973 in Salt Lake City, it was not uncommon for other

lawyers to lend a hand to a new lawyer. More mentoring took place then, I think, than presently. There are a lot of reasons for this, one significant one being the tremendous increase in lawyers in Utah which makes it more difficult as a practical matter and other demands upon the profession. Previously, much less time was spent in practice development, office management and maybe clients, partners and courts were less demanding as well.

We presently have excellent lines of communication with our law school deans inasmuch as they are ex-officio members of our Board and have contributed to our Bar for some time, and we enjoy good relationships with our Supreme Court with an open dialogue about various Bar issues. Together, we will be addressing this question of lawyer competency and we invite your comments on it. My own view is that our lawyers would resist any notion of a com-

mittee on lawyer competence or quality control, and it is a very unwieldy topic in any event. Quality may be like obsenity, no one can define it well but we always recognize it when we see it. I can remember discussing quality with my father, a lawyer, when I was a kid and his response was — anyone who ever watched Willie Mays catch a baseball understood quality, he made an impossible catch look easy!

Trying the Capital Homicide Case A Rule 8 Primer

*October 28, 1994 – 9:00 a.m. – 5:00 p.m.
Utah State Bar Center*

9:00 a.m. – 9:15 a.m.	OPENING REMARKS	Stephen R. McCaughey President, UACDL
9:15 a.m. – 9:45 a.m.	UTAH: WHERE ARE WE? WHERE ARE WE GOING?	McCaye Christianson Former Staff Attorney Salt Lake Legal Defenders Association; Board Member, Salt Lake Chapter NAACP; Private Practice
9:45 a.m. – 10:30 a.m.	ETHICS IN CAPITAL CASES	F. John Hill Director, Salt Lake Legal Defenders Association
10:30 a.m. – 11:30 a.m.	CASE LAW OVERVIEW	Joan Watt Chief Appellate Attorney Salt Lake Legal Defenders Association
11:30 a.m. – 12:00 noon	SPECIAL PROBLEMS WITH JUVENILES: DEFENSE CONTRACTS WITH COUNTIES	Stephen R. McCaughey Former Staff Attorney Salt Lake Defenders Association; Private Practice
12:00 noon – 1:30 p.m.	Lunch Catered by Ruby's	
1:30 p.m. – 5:00 p.m.	MITIGATION WORKSHOP OR DON'T SHOOT ME, I'M ONLY THE PIANO PLAYER.	James Thomson Private Attorney, Sacramento, California Specializing in Death Penalty Cases Robert Steele Staff Attorney Salt Lake Legal Defenders Association; Formerly with the Capital Case Resource Center of Tennessee

REGISTRATION: \$100.00 for Private Attorneys, \$35.00 for Full Time Public Defenders.

MAIL TO: UTAH ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
P.O. Box 510846 • Salt Lake City, Utah 84151-0846



Non-Lawyer Legal Technicians

By David Nuffer

The Arizona Bar has recently proposed rules under which it would affiliate, certify and regulate *non-lawyer legal technicians* who could provide legal services independent of a lawyer. The Arizona proposals are the most far-reaching in the nation. They were motivated by the lapse of Arizona's statutes prohibiting the unauthorized practice of law and the perceived need for regulation of document preparers and lay advocates. The Bar did not feel that the legislature would pass a statute prohibiting unauthorized practice of law if the Bar protected its turf in the face of consumer demand for non-lawyer services.

These "legal technicians" already operate in the Arizona market. They typically assist in preparation of divorce papers, simple wills, bankruptcy documents, eviction papers and collection matters. These transactions are overwhelmingly complicated to a lay person but their repetitive, standardized, and narrow nature enables a legal technician to acquire an expertise without a formal legal education. Not surprisingly, these non-lawyer legal service providers have emerged most strongly in the sunbelt states of Arizona and Florida, with large senior populations.

In a way, the modern legal technician is

comparable to the lay providers of legal services in the 1800's, such as a lawyer without formal training, a notary public or a justice of the peace. Through self-education, those individuals were a community resource to those unfamiliar with the law. Similarly, the non-lawyer technician is usually self educated, through experience, in a fairly routine area of the law-related activity.

No one is surprised at the controversy provoked by the Arizona proposal. The issue is hotly debated within the Arizona Bar, and has been debated at the ABA convention in New Orleans. As the issue gains nationwide prominence, it will be debated in Utah as well. The concept of non-lawyer legal technicians is revolutionary because these individuals will practice without lawyer supervision.

LEGAL ASSISTANTS

The Arizona Bar did not take any action to define the role of legal assistants who work under the supervision of a lawyer. The "legal assistant" category is probably more familiar to most Utah lawyers. Several states already affiliate legal assistants with the state-wide lawyers association. Legal assistants cannot render services to the public independent of a lawyer, but their expertise is recognized. The concept of a

legal assistant arose when the first secretary did more than type. Gradually, as secretaries "climbed over the typewriter" they assumed a mid-level role capable of delegation of tasks and supervised legal work.

In 1986 the American Bar Association (ABA) defined the concept of a legal assistant as follows:

A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task.

The ABA definition recognizes the substantive nature of the legal work performed by the legal assistant, requiring a knowledge of legal concepts, while at the same time recognizing that the work must be done under supervision of an attorney. The ABA has not taken any role in the certification or licensing of legal assistants.

The ABA has adopted model guide-