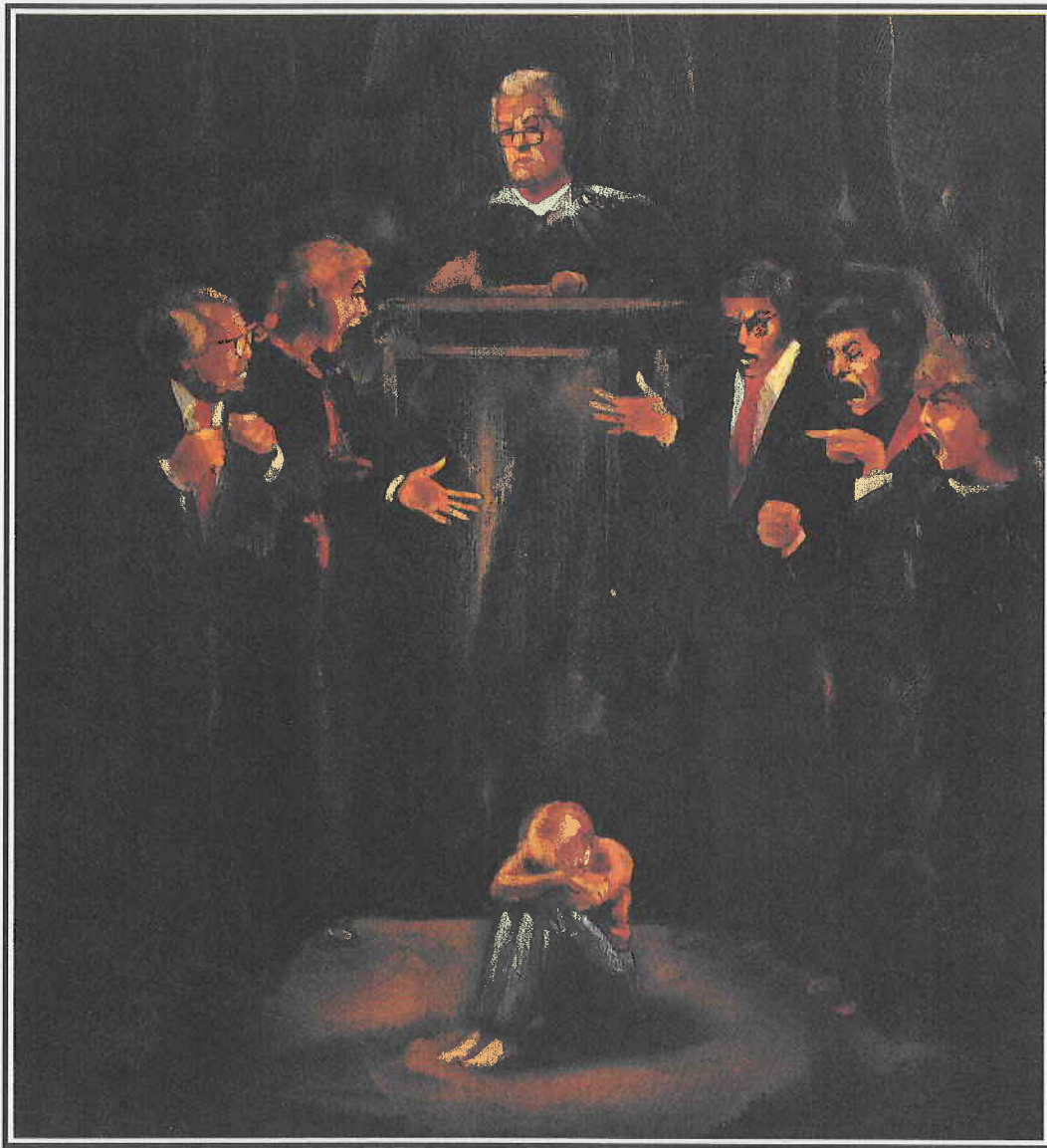


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Volume 2 • Number 1 • Winter 1997

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Voir Dire is a semi-annual publication of the Litigation Section of the Utah State Bar.

The opinions contained in *Voir Dire* are those of the contributors, and not necessarily of the Litigation Section or the Utah State Bar.

Voir Dire will review original articles submitted for publication. Please submit proposed articles to *Voir Dire*, 645 South 200 East, Salt Lake City, Utah 84111. The Editorial Board reserves the right to edit all submissions accepted for publication.

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PRESIDENT'S MESSAGE

A New Year with Old Ideas (or How to Make a Commitment and Keep It)

by Steven M. Kaufman

It's early December and I am writing my fourth message to you. I have some pressure put on me by the *Utah Bar Journal* police to get this done in a timely manner, so as to set a good example for all the other contributors to our revered publication. I am doing my best, as ideas come easily, but putting them to the computer keyboard is tedious, to say the least. It is a privilege, one I take seriously, to have a forum to say just about anything I want about anything that seems appropriate to write about at the moment. The moment I finished the last message I was already searching for the next idea to write to you about, something warm, different, and of course, lawyer-like. Snow is again falling today, and I set the fireplace aflame so I could think of something warm and fuzzy to write about. As the new year is upon us, I think about all the things I want to accomplish for our Bar, as its President, as a lawyer, and as a friend.

As President, I am half way through what has been a most gratifying, but exceptionally busy year of Bar business. We have run our first-ever media message about lawyers and the good they do for so many, and the response has been impressive. For example, the *Guardian ad Litem* program has received enough volunteers to start a new training program. One of our members received several calls offering assistance in his effort to help the underprivileged, along with monetary contributions. Another giving lawyer not only received many positive comments, but also received a commitment to send money to her chosen charity for their Christmas contribution project. A new staff of volunteer students will attempt to



set up a program to serve migrant workers. Another lawyer has offered to work under the viaduct to help the homeless, and even the homeless have seen the message and sought help from our giving attorneys. We can be proud of our own who help others and who do it, not for the recognition, but just to do good for those in need. Our Bar can be congratulated, and this series of newspaper messages was a success, in my opinion. Maybe we can publish some more, because I know there are hundreds of lawyers out there doing wonderful things. I am proud of their commitment, and this program is one way to let those in need find us, and to allow those skeptics who don't think we are up to anything good to see that we are.

Another program I am attempting to get moving is the mentor/mentee program through the University of Utah and Brigham Young University Schools of Law. We have put together the policy package and are attempting to match the students with the lawyers and law firms. It is gratifying to note that all we had to do is pick up the telephone and ask, and no one, and I mean no one,

has said no to the request to get involved in this new endeavor. We have Carman Kipp and his wonderful ability to "seek and ye shall find" format, and I am excited and hopeful that this is a first step in the Bar's continuing effort to promote professionalism and civility within its ranks, starting with those who need to see it first hand before getting out in the real world of lawyering. This is another showing of the commitment our experienced members put forth, especially with such busy schedules to meet. Thanks for your help, which ultimately will help us all.

When anticipating this wonderful job, I often thought of the many things I would like to do, and complete. Doing and completing are separate agendas. Taking on too much only guarantees lack of completion. I have been told by several past presidents to have an agenda and complete it. This subject often advances itself, and I find myself thinking of something new that seems like a grand idea. Then I remember the sage words of my predecessors and rethink my agenda. As the new year gears up, I think it's an appropriate time to remember that a new year is a good time to remember old ideas. Old ideas just get older unless you take the time to put them into effect, and sometimes the oldest of ideas are the best ones to promote. Professionalism and civility issues will always have a forum as long as I have the pulpit. I try to keep my agenda directed, but sometimes best intentions go unfulfilled. Don't ever hesitate to remind me that our profession needs spokespeople who care and for whom the image of lawyers is an appropriate issue about which to speak positively.

January is a time for reflection, a

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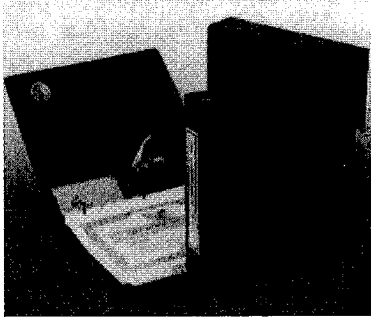
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time to again commit to oneself that ours is the best profession. We have an opportunity afforded us that few other professions allow. We have the ability to help remind society that ours is the best system and we are its committed associates. Our education has given us the ability to represent others in their grave times of need. We are able to commit to society that we are a profession that can, and does reveal what is good and important in today's world. We must continue, with resolve, to maintain a commitment to new ideas and ideals, utilizing the old ideas of those before us because they, too, had the same resolve. As I continue to help in the guidance of our Bar, I look forward to meeting as many of you as I can during my tenure as your President, and as this new year progresses I will often be reminded of our caring and sharing membership. Share a commitment to your profession and fellow lawyer and judge to maintain the highest standards of demeanor with your adversary, either in or out of the courtroom. Remember that he or she also is your friend in the profession, that there will always be another case to settle or try, and that your relationship with other members of our Bar is ongoing past this one case or dispute. I am hopeful that you will consider my message as a positive reminder that, we, as lawyers and judges, are our own best advertisement. Society looks to us for direction. We can give to that society a wonderful calling card for the new year. It's not that difficult to be a good lawyer, in the true sense, and still represent your client appropriately and with the skills with which you have been entrusted.

On a final note, this new year brings with it a great many opportunities for your involvement in Bar activities. Honestly, did you think I could write a new year's message without a plug? Not only will you be exemplifying all that I have been discussing, but you also will have the opportunity to network with so many other talented people. To keep you updated on my involvement: I have been attending monthly Bar staff meetings, which is something a little different. Your Bar staff is busily preparing for the Mid-Year Meeting in St. George set for March 6-8, and the Annual

Bar Meeting in Sun Valley, July 2-5. Both of these meetings should take an advance marking in your calendars, as they look to be wonderful, both from an educational and social aspect.

I am also going to San Antonio and Scottsdale next month for two very important Bar functions. In San Antonio, the National Association of Bar Presidents meets for discussions on how we can better lead our Bars into the next decade. The Western States Bar Conference meets in Scottsdale at the end of February to discuss how states with similar issues and membership can better meet the needs of the membership. These both should be well worth attending. Granted, I am not complaining about this duty either, as these are both great places to go. I just want to keep you updated on where I am going and what I will be doing on your behalf. I think it is important to let you know. On most Fridays or Mondays, if I'm not at my office, you can find me at the Law and Justice Center, if I'm not out of town on Bar business.

Also, I want to thank everyone in advance for being so kind in allowing me continuances on cases. My Bar travels and meetings take a lot of time, but I am grateful and happy to take that time, as I strongly feel the Bar and its work are well worth it.

On a final, final note I apologize to those whom I have promised to take to dinner, or go to lunch with, but have not. You know who you are so I won't embarrass you in my column. I will respectfully request that you call me and force me to live up to my commitments. Have a great new year, filled with grand health and wonderful friends. Talk to you soon!

COMMISSIONER'S REPORT

Toward a Better System of Justice

by Debra J. Moore

A recent Bar study of racial bias in Utah's criminal justice system represents a valuable step toward the creation of a more credible justice system. During the past year, the Equal Administration of Justice Committee gathered data and interviewed people throughout the state about their perceptions of the treatment of minorities within the system. The interviewees included judges, prosecutors, private and public criminal defense attorneys, law enforcement officers, a law professor, and minority members of the public. The Committee concluded that despite conscious efforts to erase racial and ethnic bias from the criminal justice system, such bias probably still exists.

The Committee's conclusion was necessarily tentative because of a marked lack of statistical data to explain anecdotal evidence of perceived bias in the system. Nevertheless, the Committee recognized that both the perception of bias and the lack of such data are, in and of themselves, significant problems that require action. Accordingly, the Committee's study urges all state agencies involved in the justice system to develop management information reports to monitor the agencies' practices and procedures for disparate impact on minorities. Such reports will allow agencies to remedy any illegal discrimination and to dispel any misperceptions of discrimination.

The Committee further recommended that the Bar:

- actively encourage more participation by minorities;
- provide Continuing Legal Education programs on bias and diversity;
- gather and review statistics to determine whether any disparate impact on minorities exists in the Bar admission process;



- encourage more aggressive recruitment of minorities in the justice system and develop methods for evaluating recruitment efforts through statistics;
- develop training to educate participants in the legal process about different cultures and how well-meaning persons can discriminate because of a lack of comfort or understanding about persons who are different; and
- participate in and support a more comprehensive study of the judicial system by a racial bias task force recently approved by the Judicial Council.

The Committee, which consisted of Bar Commissioners Denise A. Dragoo, John Florez, James C. Jenkins, Charlotte L. Miller, D. Frank Wilkins, and me, was formed by then-President Dennis Haslam in the aftermath of the jury verdict in the O.J. Simpson criminal trial. One of many concerns about the justice system highlighted by the Simpson trial was the existence of widespread public distrust of the system, particularly by racial and ethnic minorities. The Committee's study establishes that Utah is far from immune from such concerns.

Among the comments heard by the Committee were:

- Every police department has a "Mark Fuhrman." He just hasn't surfaced in every department.
- Many minorities don't understand how the criminal justice system works and often are inadequately represented by counsel.
- A perception exists within the criminal justice system that minorities can more easily do jail time than others.
- Law enforcement profiles for particular crimes, such as drug trafficking and domestic violence, are racially, ethnically, and sexually biased.
- Minority youths are more likely to be arrested, detained, incarcerated, and enter the juvenile justice system with fewer offenses than other youths.
- Juries in Utah are rarely racially representative.
- Many minority victims and witnesses believe that their interests and testimony are given less weight because of their race.
- Pre-sentence reports, probation or parole supervision, and post-sentence rehabilitation efforts are less favorable to minorities than others.

The study's recommendations, if implemented, will effectively address such concerns and increase public confidence in Utah's justice system. Of course, the ultimate test of the study's value will be whether it does more than gather dust on a shelf at the Law and Justice Center. The Committee therefore welcomes the efforts and suggestions of Bar members toward implementing its recommendations and eliminating racial bias in Utah's justice system.

REPORT FROM THE CHAIR

As the new year begins, it's traditional to take stock of past activities and look ahead to upcoming plans. In that spirit, the Litigation Section Executive Committee offers this report.

Voir Dire

We are very proud of the first three issues of *Voir Dire*. The articles and features have been as good as can be found in any professional journal. That's the good news. The bad news is that the expense of publishing quarterly consistently exceeded advertising revenues. Through the committed efforts of Vicky Kidman, Cal Thorpe, and the Bar Commission, we have found a solution which will allow us to sustain *Voir Dire* over the long haul. We are pleased to announce that effective with this issue, *Voir Dire* is merging with the *Utah Bar Journal*. In the past, the *Bar Journal* has been published ten times each year. In the future, *Voir Dire* will be published twice yearly as a special litigation edition of the *Bar Journal*, making the *Bar Journal* a year-round publication. *Voir Dire* will retain its look and feel, with editorial control of the non-*Bar Journal* articles being retained by the Litigation Section. Printing, advertising, and other business functions will be handled by the *Bar Journal*. These changes also will make it possible for the entire membership of the Bar to continue to receive *Voir Dire*.

Trial Academy

The brain child of Frank Carney has eclipsed our most optimistic expectations. The trial academy held six advocacy seminars in 1996, ranging from jury selection to closing argument. We are indebted to the volunteer faculty of trial lawyers and judges who made the academy come to life. Spe-

cial acknowledgement is owed to Frank, who not only moderated all the sessions but also put together the excellent written materials. Each seminar saw increased demand, forcing us to move to ever larger courtrooms. The last session, featuring head-to-head closings from Gordie Roberts, Dick Burbidge, and Dan Berman was a fitting finale. We plan to repeat the trial academy in 1997, beginning with a special two-hour session on jury selection at the Mid-Year Meeting.

Civility

For years, the civility committee has struggled to find a way to deliver its message. Everyone perceived the need, but no one knew how to meet it. We believe we now have a vehicle that works. Last year, as part of the Bar's mandatory new lawyer training, the civility committee, headed by Craig Adamson, put on a civility seminar. An experienced faculty of lawyers and judges demonstrated, with no little humor, the dos and don'ts. We plan to repeat the civility seminar on an annual basis.

Model Jury Instructions

The Litigation Section continues to be active in contributing to the continuing evolution of the Model Utah Jury Instructions.

Annual and Mid-Year Meetings

The Litigation Section will sponsor and conduct break-out and plenary sessions in St. George and Sun Valley.

Evening with the Bench

In a continuing effort to foster good working relations between Bench and Bar, the Litigation Section will again host an evening of socializing and pro-

fessional exchange with district court judges from around the State. We are looking into the feasibility of sponsoring a similar evening with appellate court judges.

This report hits some of the highlights of the Litigation Section's activities. It is not all-inclusive, nor is it intended to be exclusive. The Litigation Section exists to serve the professional needs of its members. We are always open to new ideas and worthwhile undertakings. By the same token, we are always looking for willing volunteers to help carry them out. —

David Jordan

FROM OUR PERSPECTIVE



Frankly, we're weary of lawyer jokes and anecdotal bad-mouthing. Everyone seems to have a story about a bad lawyer, an avaricious lawyer, a lawyer who took advantage of them. These are the stories that make the best press because they appeal to a public all too willing to accept the misguided stereotype that most lawyers are corrupt and amoral predators, motivated by greed. The stories we don't often see in print are the ones about attorneys who challenge these unflattering stereotypes with quiet courage, hard work, and no expectation of financial reward.

You may have heard that one of our number abandoned his law practice, leaving scores of clients to fend for themselves. The media predictably focused on this part of the story. What we didn't see was much coverage about the Bar's considerable efforts to right this wrong, or about the generosity of individual attorneys who volunteered their time and that of their support staffs to assist the Bar.

Many of the abandoned clients were people with pending criminal matters who paid their attorney with cash up front. Their stories had a common thread: the money to pay for an attorney was hard to come by. Often, it was an entire paycheck, or the client had to borrow the money. In either case, the clients simply had no

resources to pay for another attorney.

Enter the Bar and some of the area's decent, caring criminal attorneys. Under authority of a court order imposing a trusteeship over the attorney's law practice, the Bar took control of and inventoried the attorney's client files. In criminal matters with immediately pending court dates, the Bar contacted the judges and prosecutors, as well as the clients, to assist in arranging for postponements sufficient to permit the clients to obtain substitute counsel. The Bar's co-trustee, Gregory Sanders, and his paralegal, Randy Lloyd, assumed the demanding task of contacting the clients and returning their files. With the assistance of the Bar's Pro-Bono Coordinator, Toby Brown, the Bar identified attorneys willing to donate their time by meeting with the abandoned clients, reviewing their cases, and, where appropriate, taking the cases on a pro bono basis. In this manner, all abandoned clients with active criminal matters who wanted pro bono counsel were assigned to someone who would help them.

The Bar and its other co-trustee, Sidney Baucom, along with Mr. Baucom's paralegal, Joy Nunn, also took control of and

inventoried scores of client files pertaining to civil matters. Again, clients were contacted and the files returned. Any client with a civil matter who wanted assistance in finding new counsel was given this assistance. Clients with domestic matters who paid their attorney's fees in advance were referred to pro bono counsel with experience in domestic matters.

The Bar is also coordinating a huge operation to identify and contact clients whose closed files were abandoned by their attorney. Several law firms and a number of students are donating paralegal time to the Herculean task of sorting through more than one hundred boxes of files, with the goal of returning them to the clients.

Your Bar dues helped fund the Bar's efforts to protect these abandoned clients, and in this respect we all share credit for being among the good guys. And then there are those of us who stepped into the crisis and offered to help, not with any expectation of compensation, but simply because it was the right thing to do. Next time someone tells you about a rotten lawyer, remember the collective efforts of the attorneys who rushed to give their assistance when it was so badly needed. We can all be proud that ours is a profession composed of generous individuals who respond selflessly to the community's needs. ■

