

UTAH BAR JOURNAL

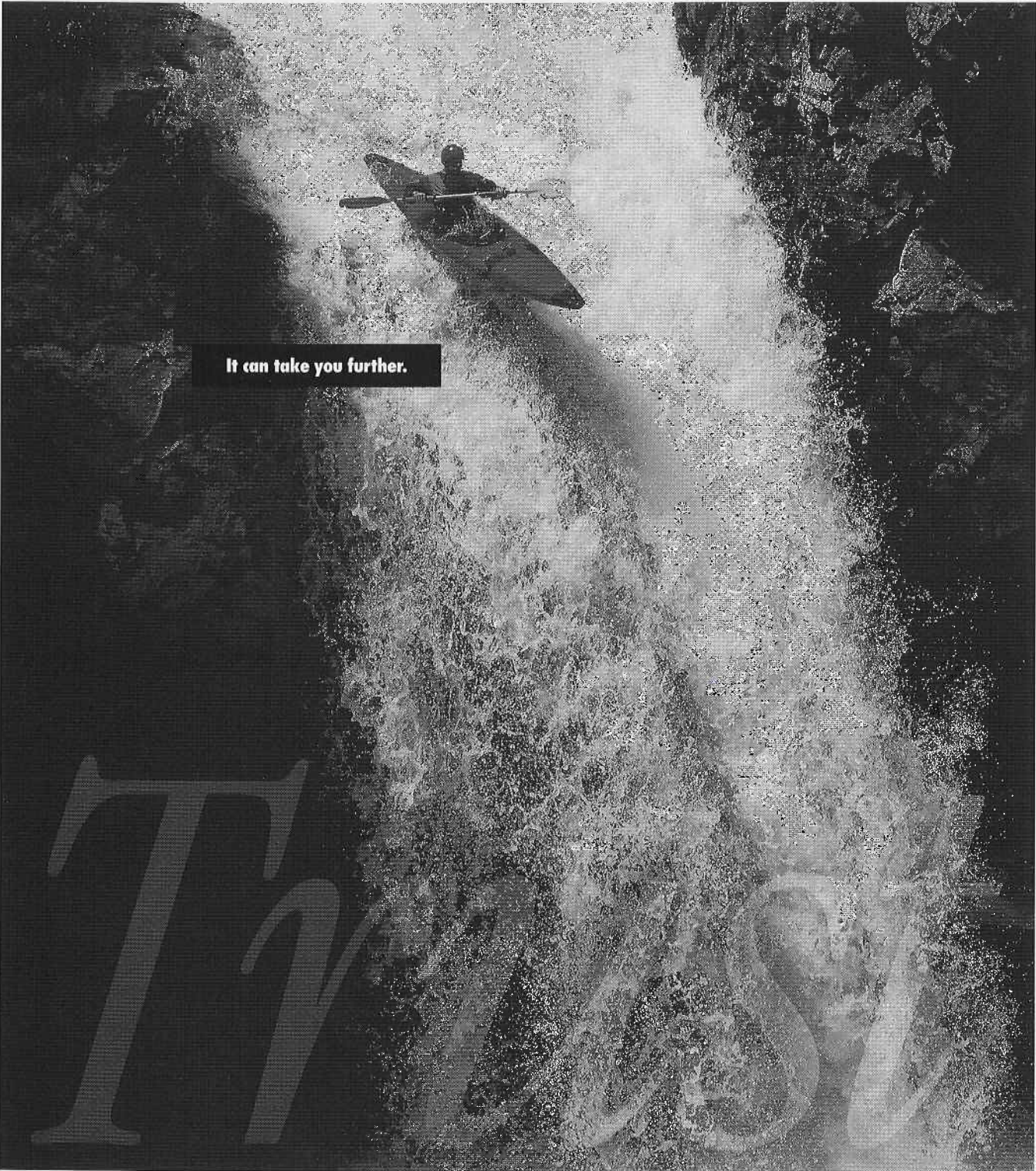
Vol. 11 No. 2

March 1998



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VISION OF THE BAR: To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.

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LETTERS

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1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.

2. No one person shall have more than one letter to the editor published every six months.

3. All letters submitted for publication shall be addressed to Editor, Utah Bar Journal and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.

4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.

5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Code of Professional Conduct, or (c) otherwise may subject the Utah

State Bar, the Board of Commissioners or any employee of the Utah State Bar to civil or criminal liability.

6. No letter shall be published which advocates or opposes a particular candidacy for a political or judicial office or which contains a solicitation or advertisement for a commercial or business purpose.

7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.

8. The Editor, or his or her designee, shall promptly notify the author or each letter if and when a letter is rejected.

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PRESIDENT'S MESSAGE



Annual Bar Awards: Opportunity for Celebration

By Charlotte L. Miller

One of the best aspects of serving on the Bar Commission is celebrating the contributions and achievements of colleagues. In April, the Bar Commission will be selecting the recipients of the annual awards to be presented at the annual meeting. I encourage each of you to nominate at least one person for an award this year – and it would be great if you nominated a person in each of the categories. There are many benefits to nominating individuals for awards. Nominating a colleague allows you to focus on the colleague and discover information about him or her. It allows you to share that information. I have told the Commission members that when we discuss nominees for awards we should spend time relishing in their accomplishments, that we should remember the accomplishments, and make a point of letting others know about the accomplishments of their colleagues. Even those who are not selected as recipients should be told “thank you” and “good job” for their service. Nominations also allow you to honor a colleague simply by nominating him or her. I have found that people who are nominated are often quite touched by the nomination – even when they are

not the final recipient.

When nominating individuals, provide specific information about the person's contributions. Nominations that simply state that a person has been a good lawyer, has represented the poor, or has been a good judge, are not very helpful. Instead, tell a story about the person, about a particular case or a particular contribution that was meaningful. The latter has far more impact.

The criteria and the list of awards are published in this *Bar Journal*, and the due date for submissions is April 1, 1998. To help give you ideas about whom to nominate, I have listed below some of the recipients in each category.

JUDGE OF THE YEAR

1997	Hon. W. Brent West
1996	Hon. Leslie A. Lewis
1995	Hon. J. Thomas Greene
1994	Hon. John A. Rokich
1993	Hon. Bruce S. Jenkins
1992	Hon. Michael Murphy
1991	Hon. Cullen Y. Christensen
(From 1986 to 1990 awards were presented to Appellate, District, Circuit and Juvenile judges of the year.)	

PRO BONO LAWYER OF THE YEAR

1996	Mary Margaret (Peggy) Hunt
1995	Vinh K. Ly
1994	Nelda M. Bishop
1993	James C. Lewis and L. John Lewis
1992	Betsy Ross
1991	James Haisley/Roger Moffitt

DISTINGUISHED LAWYER OF THE YEAR

1997	Gayle F. McKeachnie
1996	Dale A. Kimball
1995	Gordon L. Roberts
1994	Joseph Novak
1993	William B. Bohling
1992	Hardin A. Witney
1991	Herschel J. Saperstein
1990	Brian R. Florence
1989	Randon W. Wilson
1988	Ellen M. Maycock

YOUNG LAWYER OF THE YEAR

1997	Jensie L. Anderson
1996	Kristin G. Brewer
1995	Hon. Kimberly K. Hornak
1994	Colleen Larkin Bell
1993	Gregory G. Skordas
1992	Gordon K. Jensen

1991 Elizabeth A. Dalton

**DISTINGUISHED
SECTION/COMMITTEE**

1997 Young Lawyers Division –
Daniel D. Andersen

1996 Needs of Children Committee
– Carolyn B. McHugh
Unauthorized Practice of Law
Committee –

G. Steven Sullivan
1995 Litigation Section –
Ross C. Anderson

1995 Delivery of Legal Services
Committee – Keith A. Kelly

1994 Ethics Advisory Opinion
Committee – Gary G. Sackett

1993 Litigation Section –
William Bohling

Legislative Affairs –
David R. Bird

1992 Ethics and Discipline
Committee

1991 Family Law Section

**DISTINGUISHED NON-LAWYER FOR
SERVICE TO THE PROFESSION**

1997 Margaret R. Bird
1996 Sherianne S. Cotterell
1994 Ray Westergard
1993 Lyle K. Campbell
1992 Stanley B. Bonham
1991 Norma W. Matheson

PRO BONO LAW FIRM OF THE YEAR

1990 Parsons, Behle & Latimer
1989 Fabian & Clendenin
1988 Edwards & McCoy
1987 Jones, Waldo, Holbrook
& McDonough

Time is not an abundant commodity for any of us, but please take some time to celebrate your colleagues' contributions and to honor them. Do not use as an excuse an assumption that the award process is closed and pre-determined. It is a very open process, but to assure its effectiveness you need to participate. I look forward to seeing your nominations.



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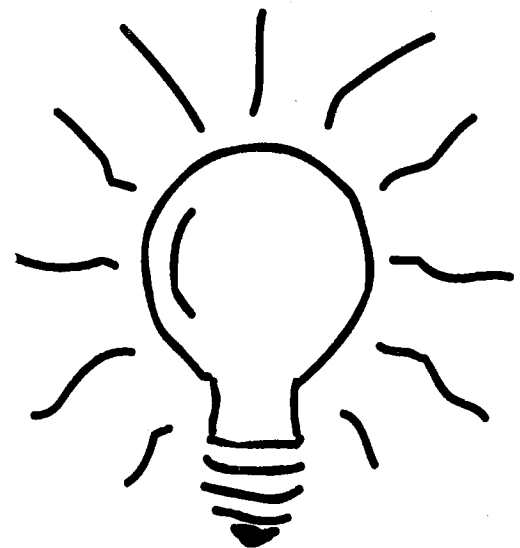
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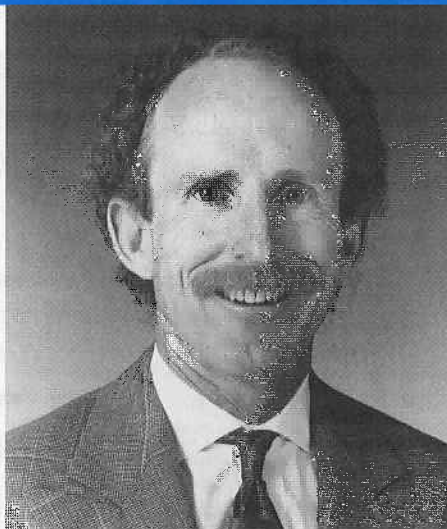
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It's Time for Lawyers to Teach Civics 101

By Fran Wikstrom

Recently the State Bar of New Mexico commissioned an opinion poll on the public's perception of lawyers and the legal system. The results are not pretty! A majority of the respondents have negative feelings about lawyers and the court system. They believe that the system is too slow, too expensive, too adversarial and not fair. They feel that the legal system does not treat them with respect.

Lawyers fared even worse. The respondents had a very low opinion of the honesty and ethics of lawyers in general, although they were very positive about their own lawyers. Thirty-four percent don't like lawyers and forty-five percent would not want their son or daughter to become a lawyer.

It is a novel thing for the bench and bar to commission a poll of consumers of legal services. Too often we fall into the trap of thinking that the legal system exists to serve the needs of the professionals within it. New Mexico will follow up with surveys of recent litigants to obtain more specific information on how the system met their needs. Trade-off questions will also be asked to determine whether people are willing to sacrifice thoroughness for faster, cheaper litigation. One of the goals of the studies is to identify ways in which the legal system may be reformed.

In the meantime, a lot can be gleaned from the results of the first survey. It turns out that much of the public's negative view of lawyers and the legal system is fueled by misperceptions of what occurs in the system and some fundamental misunderstandings of the way the system is designed to work. For example, a large percentage of the respondents were critical of lawyers and courts for allowing criminals to go free on technicalities. They also believe that courts are too lenient in sentencing.

These results are consistent with what most of us have experienced. How many times have we heard the entire criminal justice system castigated because of the O.J. Simpson debacle? How many times have people asked us: "How can a lawyer represent someone she knows to be guilty?" Unfortunately, most people's perceptions of lawyers and the legal system are shaped by media reports of aberrant cases and dramatizations ranging from "LA Law" to "Ally McBeal." No lawyer toiling in the trenches can recognize himself or herself in these TV depictions or in the latest John Grisham novel.

But, the public doesn't know that. If they ever learned about the American legal system in high school civics, certainly they have long ago forgotten it.

What can we do about it? Quite a bit, actually. It is time for all of us to become

teachers. Every time we get an opportunity to speak to a group, to write an article, or to talk to a neighbor over the back fence, we should look for an opportunity to correct the misperceptions and misunderstandings of our fellow citizens.

We need to teach them that our Bill of Rights is not a list of "technicalities." These fundamental rights protect all of us from being subjected to a police state. We need to patiently explain that most police officers play by the rules and most defendants end up being convicted and punished. We must explain why it is better that an occasional criminal go free than to have innocent citizens subjected to warrantless searches.

Similarly, the word needs to get out that the vast majority of convicted criminals are not being treated leniently. In fact, judges are sending so many people to prison that most states are running out of places to put them. The number of persons incarcerated in the country has never been higher.

While we're at it, we need to throw in a little high school civics. People need to understand that our adversarial system of justice *requires* that there be vigorous advocates on both sides. This includes people who are charged with crimes. The system does not break down when criminal defendants are well represented. To the contrary,

it works best under those circumstances. The O.J. Simpson trial was an aberration; it should not define the system.

With approximately five thousand lawyers in this state, we should be able to get the word out pretty well. Before long we might hear people say in response to criticism of the legal system: "That's not the way it is. I spoke to my friend Sue who is a lawyer and she told me . . ." But this will never happen if we complacently sit by and allow misperception and misunderstanding to determine public opinion.

A final word about respect. Odd how respect is a two-way street. We can hardly complain that the public has no respect for us if we show them little respect. All of us, lawyers, judges and court staff, need to treat litigants with more respect. For starters, we need to be considerate in scheduling, we need to answer their questions, we need to explain the process and we need to define technical language. Instead of focusing on individual annoyances, we must remember that without these consumers of legal services, we would have no clients and no cases. In short, we would be out of business.



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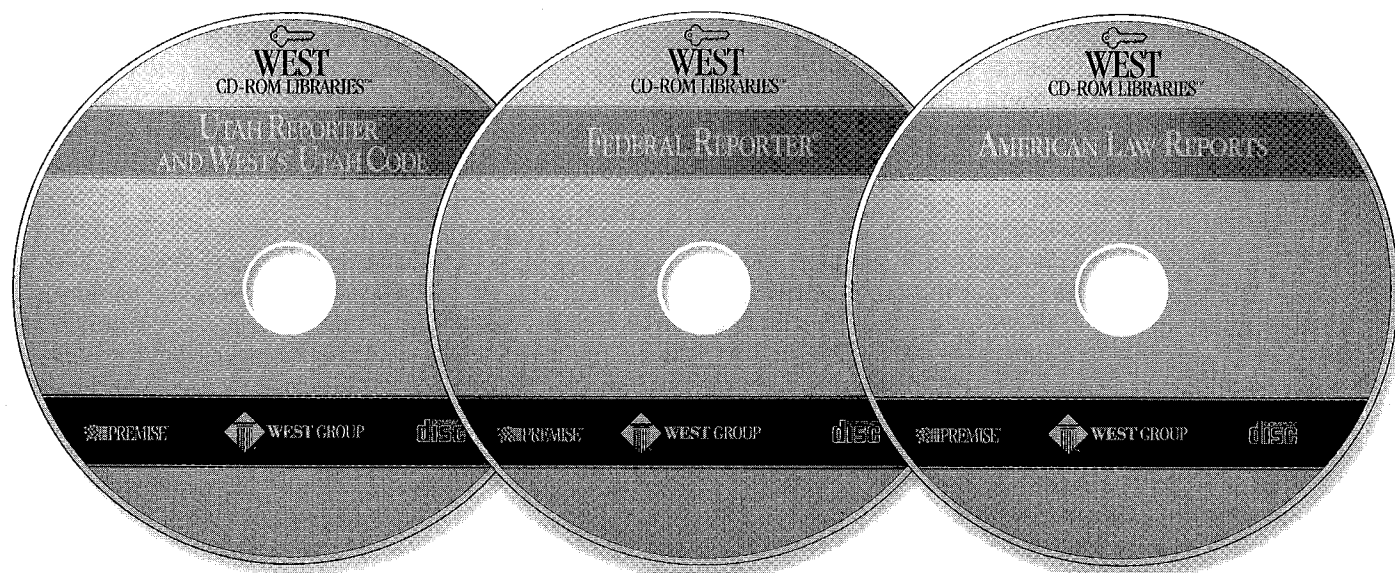
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Video Trial Exhibits

By John Farell Fay

More often these days when the stakes are high, trial attorneys try to persuade the jury with computer videos attempting to recreate or simulate what actually happened or with plain videos to help portray how their clients' injuries severely impact their every day lives. [Note: It is interesting to note that day in life videos are the plaintiff's trial weapon yet, historically such videos are the birth child of the surveillance film long used by the defense bar to show malingering plaintiffs.]

DAY IN THE LIFE AND SURVEILLANCE VIDEOS:

Attorneys representing seriously impaired and disabled clients will often want to introduce videos that portray a "day in the life of" their clients. Such videos can be highly effective in demonstrating the day to day difficulties and challenges plaintiffs must endure with even the most taken-for-granted tasks, e.g., getting in and out of bed or a chair, bathing and dressing, using the bathroom, negotiating stairs, etc. They can portray how the plaintiff now interacts with his family and other loved ones and can show the extent of his daily medical needs all leading to a greater understanding of the reality of the burdens of his present life. In many cases the video will show how the plaintiff has been forced to modify his home to accommodate his injuries. Thus, day in the life videos enable the jury to compare the plaintiff's lifestyle with that of a comparable, non-disabled person. Such videos are valuable when you have an unsophisticated client who is unable to verbally paint a picture of his impairments and how they disable him. Such videos are near essential for the client too ill to come to court. Hence, the video will aid the jury in determining the nature and extent of plaintiff's injuries, impairments and attendant disabilities. With permission during opening



JOHN F. FAY is an experienced civil trial litigator practicing in Salt Lake and Park City. He has presented hundreds of personal injury claims in arbitration. He writes and lectures on personal injury, insurance bad faith, trial work and arbitration. He recently wrote a comprehensive text, "Arbitrating Personal Injury Claims" published by Wiley & Sons. He authored a chapter, "Maximizing Damages in Small Personal Injury Cases" in the Insurance Settlement Handbook published by the James Publishing Group. He received his B.S. from Merrimack College and his J. D. from Western State University. He is a member of the Utah and California bars and tries cases in both jurisdictions. He is a member of the Association of Trial Lawyers of America and the Utah Trial Lawyers Association where he sits on their Board of Governors. He sat as a judge pro-temp for the Los Angeles Superior Court and he has served as an arbitrator for the LA Superior Court and the LA and Salt Lake Districts of the American Arbitration Association.

statement, and always during closing arguments, plaintiff can use still photographs from the video to effectively make his points. This permits counsel to focus on a particular injury or disability depicted in the "day in the life" video.

The general rule governing the admissibility of videos is that since they are a form

of motion pictures they are admissible to the same extent as photographs. *Roberts v. Stevens Clinic Hosp.* (W. Vir. 1986) 345 S2d 791, 796 *Cisarik v. Palos Comm. Hosp.* (Ill. 1991) 579 NE 2d 873, 875. In Utah, "photographs include still photographs, X-ray films, video tapes, and motion pictures." *URE, Rule 1001(2)*

Admission of these videos however, is not without formidable contest. Defense counsel will object to the video, charging that it is inflammatory and unduly prejudicial. Plaintiff's counsel will offer that while the scenes are unpleasant, so are the plaintiff's injuries. Plaintiff's counsel should argue that what it portrays is the plaintiff's "real" life and thus, it accurately shows his dependencies, physical limitations and frustrations. Since it is "real", it can't be "unduly" prejudicial. Finally, counsel should argue that the video is necessary for the jury to fairly assess the plaintiff's continuing pain and suffering and from this, determine what is adequate compensation for him.

Exclusion prejudice means more than the expected damage or prejudice done to the adversary's claim or defense through introduction of the video. Exclusion prejudice means any, "undue tendency to suggest a decision on improper grounds." *Leonard v. Nichols Homeshield, Inc.*, 384 PA 1; 557 A2d. 743. It is argued that day in the life videos generate too much sympathy for the plaintiff. Exclusion prejudice has been defined by other courts to include a video which "serves little purpose other than to create sympathy for the plaintiff." *Bannister v. Town of Noble*, (10th Cir. 1987) 812 F.2d 1265, but this same court said, "the possibility that a film will be prejudicial is significantly reduced when the subject of that film can be cross examined at trial." *Id.* @1270. Clearly, being unavailable for cross-examination is a problem for plaintiffs too ill to come to court. Here, plaintiff will need to present a knowledgeable nar-

rator to authenticate the video.

Courts are legitimately concerned that a video which generates great sympathy for the plaintiff may improperly lead the jury to determine the liability issues against the defendant. Aware of this danger, one way courts have found to admit a highly prejudicial video is to keep it from the jury until liability has been established. *Grimes v. Employer Mut. Liability* (USDC, Alaska, 1977) 73 F.D.R. 607, 610. Here plaintiff asks for a bifurcated trial or a directed verdict on liability after he puts forth all his liability evidence. On occasion, the exclusion of a video is affirmed as too prejudicial in a jury trial but the appellate court has indicated it may have admitted it in a bench trial. *Thomas v. C. G. Construction Co.*, (USDC D. So. Carolina, 1979) 465 F. Supp. 566, 570.

Often, defense counsel objects to a video claiming that it is highly prejudicial. Defendant will argue that the plaintiff is a malingerer or tremendously over exaggerates his injuries and their effects on his daily life. Plaintiff can counterattack asserting that defense counsel could have made (had an opportunity to make) a surveillance film to refute the plaintiff's video. When defense didn't take this opportunity, they waived this valuable right and should not now be heard to complain.

Defendants will argue that a video should be excluded because it is cumulative and hearsay evidence. Technically speaking, however, "a video is only cumulative of other photographic evidence of the same kind." *Grimes supra*, @ 610. A. Scott, *Photographic Evidence* Sec. 1022 @ 332 (2nd Ed. 1969). Knowing that they can exclude a video when they can show, "the motion picture is not necessary to prove or disprove a material proposition" of the claim, defense counsel will argue that it is cumulative of the oral testimony. *Weinstein's Evidence*, Section 1001-1036. The limitation of "necessity" has been expanded to include when it, "would add to the medical testimony by visually demonstrating the extent and impact of injury," *Grimes supra*, @ 610, or, when it is offered "to illustrate and supplement the plaintiff's (doctors' or spouse's) testimony," and thus it is found not to be cumulative. *Arnold v. Burlington Northern R. R.*, (Or. App. 1988) 748 P2d 174,175

Hearsay is commonly defined as an extra-judicial statement "offered in evi-

dence to prove the truth of the matter asserted." A "statement" is defined as the "nonverbal conduct of a person if it is intended by the person as an assertion," *URE, Rule 801*. This hearsay objection, however, has been defeated by courts that hold the videos, "are offered to illustrate the plaintiff's testimony" regarding his injuries. As such "it is not offered to be an assertion, nor to prove the truth of any matter asserted." Accordingly, it should be treated as a photograph. *Strach v. St. John's Hospital*, (Mich. App. 1987) 408 NW2d 441, 453. "It is not hearsay. It is demonstrative evidence that plaintiff offered to illustrate and supplement his testimony. He testified to its (the film's) accuracy, and he was subject to cross-examination". *Arnold, supra* @ 176. Without the plaintiff testifying, if the video's authenticating witness can testify to what he/she observed then the film is seen as a means of communicating these same observations. *Grimes*, @ 610.

"Courts have found that selective scenes may be the basis for exclusion if the discontinuity destroys the probative value of the film."

Next, defendants will argue that the film lacks continuity in depicting selective, self-serving scenes. Courts have found that selective scenes may be the basis for exclusion if the discontinuity destroys the probative value of the film. *Grimes, supra* @ 610 In affirming the admission of a video, the *Arnold* court (*supra* @ 176) said, "although it was selective and self-serving, much relevant evidence is of that character." The courts have also replied that to include segments that are otherwise totally irrelevant to the issues simply to give the film "continuity" is illogical and unnecessary. Juries need to see segments of the video that are relevant and probative of the issues they need to decide. When the court finds objectionable footage and orders it deleted, it thus judicially creates a "discontinuity". What is important is what the jury sees not in what order the scenes were filmed.

To help insure that your video gets into evidence, avoid the common pitfall of objectionable audio. That is, to show the plaintiff

screaming in pain while undergoing therapy is to invite exclusion as too prejudicial even when the screams were real. Avoid prejudicial backgrounds in the video. In one case a crucifix was shown above the plaintiff's bed; the court found this improper. To avoid the objections of self-serving audio and a lack of opportunity for cross-examination, do not question the plaintiff on film.

An effective narration can be tremendously important. Generally, it seems best to use a nurse, doctor or the spouse of the plaintiff to narrate and authenticate the video. The video will have no audio but at trial while testifying, the narrator tells the jury exactly what is happening in the different video scenes. When the plaintiff elects for narration on film or at trial, he/she argues that the narration explains exactly what is occurring when it is occurring and this will be helpful to the jury in understanding the video evidence. Plaintiff argues that so long as the narration is accurate, factual, and not inflammatory and the narrator is present for cross-examination, the audio or narration should be admitted.

When the plaintiff is a client too ill to come to court, there is an appropriate avenue to pursue. Consider letting adverse counsel examine the plaintiff about the video scenes during the filming. If you elect to do this, or are forced into this, at least you will have a video that should prevail over most objections to its' admission.

When there is some merit to defense counsel's objection that is confined to specific footage of the video, plaintiff's counsel may be able to edit out the objectionable footage and thereby gain admission of the video. For example, defense counsel may argue that certain activities portrayed in the video are done by the plaintiff so infrequently that it misleads the jury. Here you simply edit out that footage. If the objectionable materials consist of very minor footage or time when compared against the whole video you can argue that the objectionable material is de minimus. Remember that films seemingly calculated to inflame the jury or which are unnecessarily cumulative of oral testimony properly can be excluded. To avoid the cumulative objection, you can show the video before, or simultaneously with, the oral testimony concerning it.

Defense counsel can also object to the admission citing that it unfairly depicts the

plaintiff by using certain camera tricks, self-serving editing of the video or improper lighting or film speeds. To use a slower film speed than proper can show the plaintiff to be more disabled than he really is. To cleverly stage the film's background or to use certain lighting conditions, camera angles or telephoto lenses can lead to misleading impressions. Defense counsel needs to show this, not just speculate about it in objections.

When failing to exclude, defense counsel can address these same issues and how they "trick" the jury during both his/her opening and closing. If defense counsel has a surveillance film and it is not surprise evidence, he/she can tell the jury how that video will refute the plaintiff's video. In all events, defense counsel can tell the jury that the video is not a typical "day in the life of Mr. Plaintiff" but rather shows scenes carefully chosen by plaintiff's lawyer to exaggerate plaintiff's injuries and that it is merely a tool to try to get more money from them.

Once it is decided that the video will be introduced at trial, defense counsel (plaintiff's counsel with known surveillance films) has the right to discover facts about the video, e.g., film speed, date, time and lighting conditions, who was present at the filming, who did the filming, what footage was deleted from the final version and why, etc. While plaintiff may try to invoke a "work product" privilege (as defense counsel would with his/her surveillance film) to deny discovery of the information, the weight of the authority seems to disfavor the objection. That is, once the decision is made to introduce the video, all privilege is waived. Likewise, the court would find a waiver of any attorney-client privilege asserted. Defense counsel can also plead that denial of this discovery will lead to surprise and unfairly prejudice to them in not being able to properly prepare for cross-examination of the plaintiff, the video and the camera operator.

[Note: While Plaintiff has a right to discover the surveillance film, a fundamental fairness dictates that the defendant be permitted to depose the plaintiff before the video is discovered. This provides the defense protection against the plaintiff tailoring his testimony according to what he sees on the surveillance film.]

In moving to secure the unedited version defense counsel should argue he/she

needs it to find out if the edited version is subject to exclusion because it is inaccurate. That is, maybe what has been edited out strongly contest the footage left in. When the defense discovers that the plaintiff has omitted relevant scenes, the courts allow the defendant (the plaintiff with surveillance films) to use the footage the plaintiff omitted, assuming it is otherwise admissible.

"While defense counsel may have no right to be present at the filming, one way to insure admission of the "day in the life of" video is to invite him/her to the filming."

Plaintiff's counsel (defense counsel with surveillance films) should object to releasing the unedited version, arguing that what was edited out is protected from discovery by both the work-product rule and the attorney-client privilege. To produce the unedited version will reveal the attorney's impressions, opinions and conclusions which are absolutely protected from discovery. Further, he/she can argue that it is pure speculation to claim that the edited version improperly portrays the plaintiff and that defense counsel is merely "fishing." Before discovery of the unedited version, defense counsel needs to show some evidence that the final product was improperly manipulated. He/she can depose the camera operator to find out if their suspicion of improper alterations is well founded. If plaintiff is to preclude this discovery the camera operator (or other qualified witness) will need to testify that:

- The camera was in good operating condition,
- The scenes in the film were not rehearsed,
- No special camera effects were used,
- No scene was edited out of the original film (or if scenes were, what scene(s) was edited-out and why; and importantly,
- The film accurately portrays what he/she saw while filming. *Grimes, supra* @609.

In one case the defense knew about the day-in-the-life video before it was created and made a motion to the court, asking that they be permitted to attend the filming. They argued their rights to this "discovery" and to

cross-examine the plaintiff during the filming. The trial court granted the request finding the filming akin to an evidence deposition. The appellate court reversed finding that the video was merely a type of demonstrative evidence. "The preparation of such evidence falls within the work product of the (plaintiff's) lawyer. . . . We believe the opposing counsel has no right to intrude into the production of this demonstrative evidence". The court believed the protections afforded defense counsel at trial before admission of the video of requiring a proper foundation and a weighing of its probative value against the danger of unfair prejudice were sufficient safeguards against an improper admission. *Cisarik, supra* @874-875

While defense counsel may have no right to be present at the filming, one way to insure admission of the "day in the life of" video is to invite him/her to the filming. If opposing counsel has been given the opportunity to monitor the filming, his/her objection at trial will be significantly diluted. Anticipating defense counsel's presence, plaintiff's counsel should go to plaintiff's home beforehand and have the plaintiff act out again and again the routines that will be filmed as well as those activities that will occur between scenes, e.g., getting from one place in the home to another, eating or taking medicine during the day of the filming, etc. Plaintiff's counsel will thus help insure that his client will give his best "performance" and avoid damaging off camera mistakes in front of the adverse attorney.

In contrast, one way for defense counsel to keep the video out of evidence is when the plaintiff has suffered from previous injuries and residual disabilities from those injuries. If the impairments and disabilities attributable to the present injuries cannot be clearly separated out from those that preexisted the event at bar, the video should be excluded.

Moreover, an equity argument defense counsel can use to deny admission of the video is to plea that he/she is on "unequal footing" to contest this piece of the plaintiff's evidence. Thus, the defense is unable to defeat or even offset such high impact evidence. Addressing this issue in *Thomas v. C. G. Construction Co., supra* @ 571, the court said it:

can conceive of no way in which the defendant can possibly depict with

equal impact those periods of time during the plaintiff's recovery process when he was either free from pain or relatively speaking, free of pain. Defendant never had the opportunity of preserving such periods and being able to present them in such a dramatic way. In this court's judgment, no amount of testimony from attending physicians, nurses etc., could possibly offset the dramatic effect of the audio-video tape in question.

In the case of *Bannister v. Town of Noble*, *supra*, the court addressed a checklist that the trial court should address in deciding if "a day in the life" video should be admitted. The *Bannister* court said the trial court should view the film outside the presence of the jury and then consider whether:

- Its' probative value outweighs the possibility of prejudice. (That is, does the film fairly represent the facts with respect to the impact the injuries have had on the plaintiff's daily life? Here, outside the jury's presence, the court can decide if it accurately portrays the plaintiff's daily routines.)
- The film seems to demonstrate self-serving behavior or exaggerated difficulty in performing ordinary tasks? Or whether, the film has little or no purpose other than in creating sympathy for the plaintiff.
- The dominating nature of the film will give it more weight than more conventionally elicited testimony? [That is, will the jury remember it clearer than the other testimonial evidence and accordingly give it greater weight than it truly deserves?] and whether,
- Any prejudice from the film can be reduced through cross-examination?

Finally, *Bannister* offered that, "the probative value of the film is greatest, and the possibility of prejudice lowest, when the conduct portrayed is limited to ordinary, day-to-day situations." *Bannister, supra* @1269. Since the focus of all day in the life videos is admission at trial, take the court's advice and create the video to maximize its' probative value. Temper the creation by the fear of exclusion.

COMPUTER ANIMATIONS:

Computer animations are the new, unbelievably unique, expensive, yet - highly impressive demonstrative aid of the 21st century. The possibilities of this type of

demonstrative evidence are limited only by your imagination. Computer animations can give the jury visual access to heretofore totally inaccessible places, e.g., inside a gas combustion engine to see its parts in operation, inside a wall to view the plumbing and electrical systems, and even inside a human body to see its many functions interacting and working simultaneously. It can show an object from angles otherwise totally inaccessible.

No Utah case has addressed the use of computer animations. An analogy, however, can be made that such animations are only high tech off springs of our more traditional form of demonstrative evidence. Accordingly, the requirements for admissibility should be analogous. "If the reason is the same the rule should be the same." *California Civil Code 3511*. In *People v. McHugh*, (1984) 476 N.Y.S. 2d. 721, a manslaughter case, the court, in talking about a computerized reenactment of a motor vehicle collision where four people were killed said:

The evidence sought here is more akin to a chart or diagram than a scientific device. Whether a diagram is hand drawn or *mechanically drawn by a computer* is of no importance. What is important is that the presentation be relevant to a possible defense, that it fairly and accurately reflect the oral testimony offered and that it is an aid to the jury's understanding of the issue.

In seeking admission of your computerized animation when you might have used a model, chart, graph, photograph or film, you should argue:

- It can better help the jury understand the issues than a model, chart, graph, photograph or film;
- It accurately and fairly portrays what it purports to portray;
- The foundation witness is qualified to testify on both the subject matter underlying the reenactment, (e.g., accident reconstruction) and the intricacies of how the animation was produced, i.e., how the software program manipulates the data fed into it;
- It will not confuse or mislead the jury on the issues before it, nor will it create a substantial danger of any undue prejudice; and,
- It will save a considerable amount of trial time.

Because the computer animation is generated from basic facts there are many opportunities to take an advocate's license in

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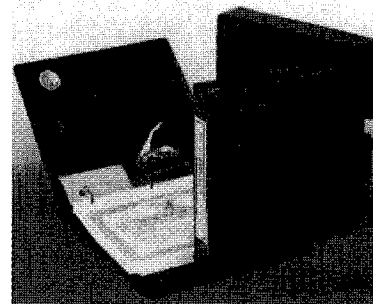
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embellishing and in editing it. Trees or buildings present at a scene cannot easily be edited out of a photograph. Nor, can a photograph in a construction site claim add another 6 floors to a skyscraper beyond what was already built at the time of the incident. A computer can handily do such editing of, or adding to, the video.

Because of this power, accuracy can be problem fraught. To evaluate what came out, you need to know what went in. For example, if the real data reflects a G-force of four but the plaintiff's expert used a G-force of eight, the severity of an impact is greatly distorted. Likewise, if the real evidence attests to a crash at sixteen miles per hour but the defendant's expert used twelve MPH in his video simulation, the defense expert's video will mislead the jury and you may not know it.

Computer animations need a foundation laid by a qualified expert to testify to the reasonableness of the data used, how it was input, the accuracy and general acceptance of the software used and the accuracy of the results. Bear in mind that, "reasonable data" needs to be grounded in the facts in evidence. While it can include the plaintiff's or defendant's version of the facts those facts must be in evidence. The expert needs to be able to take the jury through the step by step processes toward arriving at the animation and importantly, needs to be able to defend and justify the choice of specific data over other data also in evidence and the reason certain assumptions and/or editorial decisions were made.

When you present or challenge a computer animation, you need to know what "real data" was input, what assumptions were made and what was the basis for making such assumptions. You need to know what software was used and if it is an accurate program. You need to know if experts in the relevant scientific community generally rely upon the computer program. Aside from the "computer data", you need to know the qualifications of the expert. Is he or she qualified to testify in this subject area, e.g., the physical properties of time, speed, weight, mass and distance? Assuming the experts are qualified in the field of testimony, are they likewise qualified to testify to exactly what data was input and exactly how the software used this data to generate its findings? You need to know what assumptions the expert took in inputting data and

what editorial decisions he/she made to get the final product. Lastly, you need to know why he/she made such assumption and editorial decisions.

When you are faced with trying to deny admission of a highly impressive computerized simulation, use your discovery tools to find out the input data, all the assumptions made, all the editorial decisions elected and the basis for them and how the software manipulated all this material. Find out the scientific theory or logic that underlies the software program, each assumption and each editorial decision. Discover their expert's qualifications.

*When you present or challenge
a computer animation, you need
to know what "real data"
was input, what assumptions were
made and what was the basis for
making such assumptions."*

Federal case law has upheld your right to discover this information. *Perma Research and Development v. Singer*, (2d Cir. N.Y. 1976) 542 F.2d 111, 115, cert. denied 429 U.S. 987 (1976) *U.S. v. Liebert*, (3rd Cir. PA 1975) 519 F.2d 542, 547 cert. denied 423 US 985 (1975), *Cleveland v. Cleveland Elec.*, (N.D. Ohio, 1980) 538 F. Supp. 1240, 1266-1267.

RECREATE VS. ILLUSTRATE:

A seemingly forceful but bogus argument against the admission of an animation of an expert's theories is that it attempts to "recreate" the event rather than purely "illustrate" the testimony. Generally, such videos should be admitted when it is shown they will help the jury understand the technical opinions. To argue that the jury will assume they are seeing a re-creation of the actual event in issue is simply speculation. When your exhibit seems susceptible to exclusion because of this objection, request the court give the jury a cautionary, oral instruction at the time that the exhibit is introduced. Such an instruction should properly protect the adverse party from the exhibit being given excessive credit by the jury, and this can preserve your verdict on appeal.

Remember, when you are opposing the admission of a video simulation, like any other exhibit, careful examination of the computer animation should reveal fertile ground for cross-examination and hopefully ways to impeach the expert.

[Note: A devastating mistake often made by plaintiff's attorneys when they make a video trying to recreate the incident that injured the client is when they fail to show why the actor in the recreation video was not injured. For example, a video recreating a fall that injured the plaintiff needs to show footage immediately before (or after) the reenactment explaining why the actor was not hurt in the recreation. Show him/her getting dressed with protective equipment worn underneath regular clothes or that other protective or safety measures were taken. If you fail to show why the actor was not hurt, later some juror will be arguing that your client wasn't hurt or wasn't hurt as severely as you have portrayed him/her to be.]

An equity argument that can defeat admission of a computerized animation is that the adverse party is unable to rebut such highly dramatic evidentiary influence because he/she does not have the money. If you foresee this as a valid objection, you may be able to preclude it. Invite your adversary to participate in the creation of the simulation. He/she can then observe and comment on the process as it proceeds to the final product. Later, you can argue their input proves the "fairness" of your exhibit. Once invited to participate, a failure to do so can be argued as a waiver against certain trial objections to this exhibit.

Provisional License for New Bar Admittees Not the Answer

By Stephen W. Owens

The October 1997 *Utah Bar Journal* had an article entitled "Future of the Bar," discussing the long-term planning of the Bar. Among the ideas listed was "revising the admission process of the Bar to require more practical knowledge and training prior to full admission to the Bar." I was intrigued by this reference and sought further information.

It turns out that the Bar wants to do something about the fact that new bar admittees, although conversant in legal theory and blue book citations, actually know very little about how to practice law in the real world. To combat this evil, the Bar is considering a proposal to create a "provisional license" for new bar admittees. Similar to a medical residency requirement, this license will, after three or so years, become a full license upon "certification" of good standing by the Office of Professional Conduct and upon completion of a new lawyer CLE program and "perhaps" a mentoring requirement. The provisional license reportedly will not restrict the legal practice of a new lawyer, but will "emphasize the critical need for training beyond law school to become fully prepared to assume the responsibility of law practice." [October 13, 1997 Draft Recommendation].

THE SHORTCOMINGS OF LAW SCHOOL

I applaud the Bar for recognizing that new lawyers lack needed practical skills and often are not prepared to face the demands of real-life practice. However, the Bar's efforts should be focused on encouraging the re-tooling of law school curriculums to emphasize practice-based courses, not on adding an additional barrier to practice.

During my last year of law school, I sat on a student committee with several mem-



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This article is solely the opinion of the author, but includes some ideas discussed at recent meetings of the Young Lawyers' Executive Committee. This Committee unanimously voted to oppose the provisional license idea.

bers of the ABA accreditation team. The University of Utah College of Law was going through its once-every-seven-years review to maintain its ABA accreditation. The committee members questioned students about the benefits and shortcomings of the law school. The one nearly universal comment was that students are not being taught the practical skills they need to enter the practice of law.

Law schools offer some practical application classes such as document drafting and advanced legal writing, but these courses are

generally few and far between and often have small enrollment caps with lengthy waiting lists. Internship programs also offer real-life training. However, nearly all of the classes offered at the law school taught few, if any, practical skills.

During a full year of Contracts, the first year student does not draft a single contract. Not once in Civil Procedure is the student required to prepare a simple complaint. After completing Trust & Estates, a student still has few skills to draft a basic will. An "A" student in Family Law still does not know how to perform an uncontested divorce for a friend. In Administrative Law (perhaps the least practical class of my stint in law school), I did not learn the first thing about practice in front of an administrative agency. The list goes on and on.¹

When we bought a house following law school, my wife said to me, "I am glad you are a lawyer because you know how to go about buying our home." I laughed. Although I did well in my first year Property course, I was not taught how to complete a simple real estate purchase. Ask me about the rule of perpetuities, Bette Midler's rights when her image is used without her permission, a homosexual's rights when his landlord evicts him, or medieval English feudal law. Do not ask me about executing a basic real estate transaction.

I have heard the law school response many times: "Law school is not there to provide you with real-world skills to solve real-world problems, but is meant only to teach you to *think like a lawyer*." Fine, but do not wonder why the new, Order of the Coif law school graduate does not have a clue how to conduct a deposition, draft a pleading, or research a complex issue. Do not ask why many of the stars in law school cannot fit into a law firm environment where clients cannot afford them

spending forty (or even five) hours drafting a summary judgment motion. I find it humorous that, when confronted with a new legal problem to which I have had little exposure, I think back—not to what I learned in law school—but to what I learned in my bar review course.²

The Bar should encourage law schools to focus more on training lawyers than legal theorists (who, ironically, then seek to become law professors, continuing the incestuous cycle). To their credit, law schools are providing more “nuts and bolts” classes taught by individuals with real life experiences, but the fact remains that for every trial advocacy or business planning class, there remains six or seven straight lecture and historical case law courses.³

PROVISIONAL LICENSE PROPOSAL

While more practical training in law school is a good idea, the provisional license scheme is not. While I assume that I would be “grand-fathered” out of any such requirement,⁴ I strenuously oppose the idea. The provisional licensee should not have to go about practicing law with the knowledge that the Bar stands ready to revoke her probational standing if she does not keep in line.

The proposed scheme gives the false impression that new lawyers are the cause of many problems and that the Bar needs to more closely monitor them. It is true that the laws in our society are becoming more complex and that the lawyer work force in Utah is increasingly younger (thanks in part to our two law schools that pump out some 250 new lawyers a year, not including those who move into Utah). However, these realities do not justify adding an additional hoop through which new lawyers are required to jump before practicing. There is no evidence that new lawyers get in any more bar discipline or malpractice trouble than their more experienced colleagues. In fact, the statistics that I have seen indicate the contrary: fewer malpractice complaints are brought against lawyers who have been out of law school 0-5 years than against lawyers who have been out 5-10 years or those who have been out over 10 years (this last category comprising two-thirds of such actions).⁵ New lawyers are, overall, very sensitive to complying with the rules of professional conduct and, I believe, just as conscientious as more experienced lawyers in

handling client and trust monies.

A mandatory internship or mentoring term prior to obtaining a full license is also a bad idea. Law students and new graduates are, generally speaking, already doing all that they can to obtain internships and employment positions where their skills will be used and where they will receive additional training from experienced practitioners.⁶ Such a requirement for the law school graduate, or worse, for the *fourth* year law student,⁷ will only compound the problems and stress each of these individuals already feels in attempting to find permanent employment. An additional problem is the cost to the ever-expanding Bar to run the program and to deal with the inevitable problems of choosing.

OTHER ALTERNATIVES

In addition to working with our two law schools within the state to offer more practical skills classes, there are other things that the Bar can do to help new lawyers to successfully adapt into the real world of practicing law. A *voluntary* mentoring network could work. Under such a system, experienced lawyers would sign up through the Bar under their respective areas of practice to provide support to new lawyers who find themselves in over their heads and who have no personal network in which to obtain help and oversight. The Bar may need to provide incentives to get experienced lawyers to sign up for this potentially burdensome duty, such as a waiver of certain CLE requirements or even discounted bar dues. Malpractice issues would also need to be resolved.

Another idea that some state bars have used are “Supplemental Licenses,” in which a practitioner, through additional course work and experience, can receive an additional, specialized license from the Bar in, for example, bankruptcy. This way more experienced lawyers are appropriately recognized without weakening the credibility of new lawyers or giving the false impression that new lawyers have proportionately greater disciplinary or malpractice problems.

Finally, the Bar can fine tune new lawyer CLE programs and perhaps start a library of Utah-based practice help books and videos to provide greater resources to new lawyers struggling to figure out how to go about practicing in a new area of law. Some have even suggested that the Bar provide sample forms and practice guides to bar members over the Internet.

CONCLUSION

I applaud the Bar's interest in providing new lawyers with better practical skills so that they can hit the ground running and appropriately and competently represent their clients. Although the burden should fall primarily to law schools, the Bar can take some steps to assist in the transition. However, the proposed provisional licensing scheme is a drastic and unfair barrier to practice that should be rejected.

¹It is true that the law school curriculum cannot be tied to the law of any particular state. However, one wise commentator questioned whether the curriculum of certain law schools is tied to the law of any particular planet. See James D. Gordon III, “How Not to Succeed in Law School,” 100 Yale L. Rev. 1679, 1684 (1991).

I appreciated the teaching style of U. of U. law professor Paul Cassell, a seasoned prosecutor, who taught me Evidence and Criminal Procedure. He never played “hide the ball” or shrouded the law in “mystery/philosophy/sociology/nihilistic relativism/ astrology/voodoo/masochistic Socratic kung fu.” *Id.* at 1684.

²The fact that a new law school graduate, after spending \$30,000 and three years of hard work “learning the law,” is then essentially required to shell out another \$1200 for a bar review course to learn what is needed to pass the bar exam is another topic entirely.

³This is undoubtedly due in part to the economics of running a law school. In a humorous critique of law schools, one professor wrote:

Studies have shown that the best way to learn is to have frequent exams on small amounts of material and to receive lots of feedback from the teacher. Consequently, law school does none of this. Anyone can learn under ideal conditions; law school is supposed to be an intellectual challenge. Therefore, law professors give only one exam, the FINAL EXAM OF THE LIVING DEAD, and they give absolutely no feedback . . .

James D. Gordon III, “How Not to Succeed in Law School,” 100 Yale L. Rev. 1679, 1692 (1991). Small class sizes and one-on-one feedback from law professors (who hopefully practiced law for more than one year before realizing that they hated it) equates to big money. This may be why tuition at medical school, where they practice many of the above principles, is several times that of law schools. See *id.*

⁴Perhaps I should not make this assumption. If the provisional license idea comes to pass, and if this article offends any of the big fish at the Bar, and if they decide that perhaps I would make the perfect candidate for the provisional license, then let me just state for the record that I do not believe a word of this article.

⁵I requested statistics from the Utah Bar's Office of Professional Conduct, but was told that they are not sorted by the number of years the lawyers has been in practice. The cited numbers are from a national analysis performed by J. Randolph Evans of the Atlanta, Georgia firm of Arnall, Gordon & Gregory. Mr. Evans presents a seminar entitled, “An Internal Audit for the Ethical, Non-Negligent and Professional Attorney.”

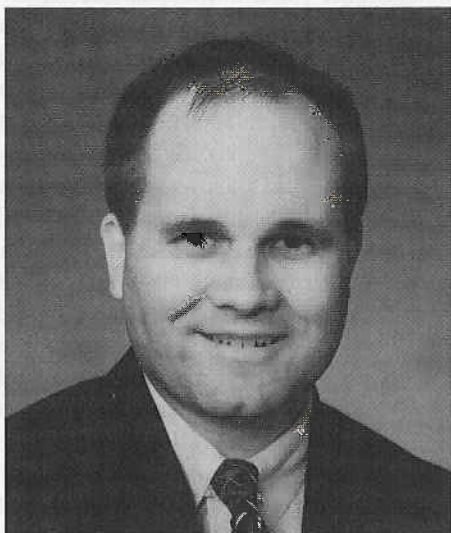
Some of the reasons given for the phenomenon that more experienced lawyers are stung more often by malpractice actions than newer lawyers is that they generally have heavier schedules and risk relying more on others to meet deadlines while ignoring technological advances designed to help avoid malpractice (e.g. conflict check and calendaring systems). Additionally, more experienced lawyers may have less familiarity with or willingness to examine court rules.

⁶One alternative is for law schools to do away with course work entirely during the third year, requiring instead that students do practical internships under close supervision. This idea has some merit. After all, what lawyer has not found his first year of practice to be vastly more educational than all of law school combined?

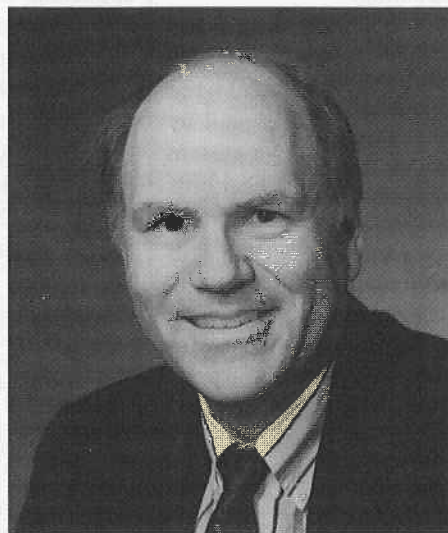
⁷This idea is promoted by those who are anxious to expand the influence (and perhaps tuition receipts) of the law schools. I will save my comments on this nauseating idea for if and when it gains any momentum. Of course, a fourth year of law school would have postponed my student loan payments . . .

Tracking Damages from a Personal Injury

by Mark J. Gergersen, Attorney and James A. Shore, C.P.A.



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1. INTRODUCTION

A QUEST TO TRACK DAMAGES

In 1988, I (Mark Gergersen) graduated from a Utah law school and moved my family to Los Angeles County. Among my adventures, I worked for a firm which represented solely motorcyclists injured in accidents. Of its army of paralegals, one devoted her efforts to tracking medical expenses. The firm owned impressive technology, but the "meds" paralegal possessed only an adding machine, which she used to

track total charges, not unpaid balances. Our biker clients lacked sophistication, but not assertiveness. Our clients would never authorize settlement without knowing what would remain for them.

To accurately calculate our clients' share of any settlement offer, we had to then (and have to now), identify, project, and total all outstanding obligations due to a multitude of care providers, insurers, and others.

To minimize tedium and eliminate additions errors, I have since sought a method to

track damages by computer.¹ First, I used a spread sheet. This allowed me to add expenses automatically, and eliminate addition errors. As I received more medical bills, I would add these to the spread sheet and create a revised total without re-entering the medical bills which I had previously posted. Searching for more "user-friendly" software, I began to use a single-entry accounting program (Quicken®), which proved superior to a spread sheet. For each entry injured client, I created a

Quicken file, within which I created an account for each doctor, hospital, and subrogated insurer. Recently, I have reviewed specialized Case Management software (such as PINS®/NEEDLES®²), which provides all-round tools for handling the multitude tasks associated with personal injury cases. Although they do not focus on accounting, many Case Management programs possess a limited capacity to perform "single entry" accounting.

But single entry has limitations. For example, the collateral source rule preserves a Plaintiff's claim against the Defendant, even though a bill is paid by Plaintiff's health insurer.³ Thus, a system should track the reduction of medical bills which Plaintiff *owes*, while separately tracking the damages (e.g., medical charges) which Plaintiff continues to be *owed*. To meet this need, I experimented with double-entry accounting software (Quickbooks®).⁴

The concept of double entry can be likened to a principle of physics. Isaac Newton observed that in our physical world, for every action there is an opposite and equal reaction.⁵ Similarly, if Plaintiff's health insurer pays a doctor bill, then liability due the doctor is decreased AND as an opposite and equal reaction the liability due the health insurer is increased. Therefore, if a system is to accurately track damages of an injured plaintiff, then the system must 1) track both halves of the transaction, and 2) show the nexus between both halves of the transaction.⁶ Through trial and error, I came to understand that there is power in using computerized double-entry accounting, to track damages. Still, I did not know how to completely harness this power.

I joined forces with James A. Shore, an experienced Certified Public Accountant. Accountants make it their business to discover and record the "opposite and equal" financial transactions. At first we had difficulty communicating, since our professions think and speak differently. As our minds met, refinements resulted.⁷ Following is our system to track damages. Note that we implemented these concepts using Quickbooks® software. However, these ideas may be used to track damages in Case Management software, spreadsheets, Quicken®, and other accounting packages (or for that matter even on paper or in your head).

2. HOW TO BEGIN: TRACK MEDICAL EXPENSES

Start simply. Begin by tracking only medical expenses and payments. If you attempt to start tracking all items at once, you may be overwhelmed by detail. To illustrate the tracking of medical expenses, we use the hypothetical transactions shown in **Exhibit "1" (Table of Sample Transactions)**. This exhibit lists each event, together with the applicable law and accounting transactions. Account names are italicized.⁸ (We avoid using the terms "debit" and "credit.") From these sample transactions, numbered one through eight, we have used Quickbooks® to generate **Exhibit "2A" (Report Showing Status of Medical Expenses)**. We have also generated **Exhibit "2B" (Report Showing Status of Liens)**.

*"The concept of double entry
can be likened to a principle of
physics. Isaac Newton observed
that in our physical world,
for every action there is an
opposite and equal reaction."*

3. FROM MILK TO MEAT: TRACK ALL DAMAGES

Once you and staff grow comfortable with tracking medical expenses, you are ready to track additional items of damage, to show the complete economic picture of your injured client. For example, you can track such transactions as those shown in **Exhibit "3" (Table of Additional Transactions)**. For brevity, the details of these additional transactions (numbered nine through twenty-one) are omitted.

4. USE THIS SYSTEM TO FILL YOUR NEEDS

A. Prepare to Settle. To discuss settlement with your injured client, place Projected Settlement amounts into accounts labeled as "WHAT IF." This allows automatic calculation of other related amounts, such as the residual funds to be distributed to your client. Print a separate report for each scenario, which captures its assumptions (input) and conclusions (output).⁹ Our sample transactions 1 through 21 (shown in

Exhibits "1" and "3"), are used to generate **Exhibit "4A" (Report Showing Projected Settlement)**. For those who speak accounting, this report is actually a Balance Sheet.¹⁰ We assume in our hypothetical example that as a last effort to settle the case, Plaintiff's attorney has negotiated an offer from Defendant to settle the case in the amount of \$51,500.00. Plaintiff's attorney believes that such a settlement is fair and in the best interest of Plaintiff. Therefore, Plaintiff's attorney seeks Plaintiff's acceptance of the \$51,500.00 offer.

Exhibit "4A" estimates that if Defendant's settlement offer of \$51,500.00 is accepted by Plaintiff, then after all liabilities are repaid, the total payments to Plaintiff from this case will be \$32,486.52. However, \$32,486.00 is an estimate of the *total* amounts which will be paid to Plaintiff, including all amounts Plaintiff has already received from insurance companies (for property damage, lost earnings PIP benefits, and out-of-pocket reimbursements). Plaintiff desires an estimate of what *additional* monies he or she will receive from accepting the \$51,500.00. Therefore, from the sample transactions we generate **Exhibit "4B" (Report Showing Detail of Amounts Paid to Plaintiff)**, which estimates that of the \$32,486.52 *total* payments to Plaintiff, accepting the \$51,500.00 would allow a \$25,671.55 *additional* payment to Plaintiff. Armed with this estimate, Plaintiff can more comfortably decide whether to accept or reject the settlement offer.

B. Prepare for Trial. Possessed with current and accurate financial data, you will likely settle the case. But if a trial is necessary, print a report which itemizes and totals amounts due from the Defendant. From our sample transactions, we generate **Exhibit "5" (Report Showing Itemization of Damages)**. Offer the report as a summary under Utah Rule of Evidence 1006, so the fact finder can understand the bills and damages. You may decide to print graphics, such as a pie chart showing a visual representation of the relative quantities of damages.

C. Prepare to Compromise a Minor's Claim. If you represent a parent as Guardian ad Litem of a minor child, then track the damages of the child. When the parent pays for a prescription, this creates a liability of the child to the parent. At the hearing to compromise the minor's claim,

the parent can seek approval for repayment of this liability. By tracking all such amounts, you offer the Court and your clients an organized view of all financial transactions of the child.

D. Wind Up the Case. As you deposit settlement monies into your trust account, you enter this deposit into your client's computerized "books" and print a status report, which shows intended disbursements of settlement monies. You present this report to your client, and obtain his or her written approval, before making final disbursements to insurers, care providers, Plaintiff, and yourself. From our sample transactions, we generate **Exhibit "6" (Report Showing Disbursements to be Authorized by Plaintiff)**. Experience has shown that this single step can avoid the later need to spend 1) time (trying to make sense of past financial transactions), and 2) money (personally repaying liens which were "missed.") This account mirrors the attorney's trust account, and should contain all transactions of the Plaintiff, which involve the attorney's trust account.¹¹

As you accurately track medical expenses, you may find errors in medical bills, caused by a provider's failure to acknowledge payment by Plaintiff's insurer. You can then print a report showing the correct balance, and itemizing entries from which your balance is derived. Clients appreciate attorneys who sophisticatedly detect such errors, even if your discoveries work to preserve only modest sums.

E. Adopt to your Client's Case. Each case is different. You will encounter circumstances which require modification of your system. For example, cases with multiple defendants may benefit from use of clearing accounts, allowing an estimation of the amount due from each defendant, pending an authoritative allocation at trial.¹²

5. CONCLUSION

When a case is young, the attorney may perceive the need to track only assets: what Defendant owes Plaintiff. For example, the attorney may wonder whether medical bills exceed \$3,000 so that general damages can be pursued. The attorney may neglect to track liabilities: what Plaintiff owes others. Later, the attorney will suddenly need this information, as the attorney seeks to settle. You need a system which tracks information early, so it can answer questions you will later inevitably ask.¹³

With all the complexity which accompanies personal injuries, at least the accounting should be made simple, so we attorneys can focus on the law for which we are trained.¹⁴ Even defense counsel and adjusters should yearn for plaintiffs' counsel to track damages, so settlement discussions can occur early and earnestly. It is said that "performance measured is performance improved." Similarly, damages measured are damages recovered.

¹Benjamin Franklin declared that "Necessity is the mother of invention." My finite ability to keep track of, and correctly add, numbingly-long columns of numbers, created my need for a system to perform this clerical task.

²Quicken® is a registered trademark of Intuit. PINS® and NEE-DLES® are registered trademarks of Chesapeake Interlink, Ltd.

Powerful case management software can cost several thousand dollars, while Quickbooks costs only a few hundred dollars, for a version which will handle the other billing and accounting needs of a law office. Thus, accounting software can be more financially accessible than case management software.

³Under this rule, if an injured person receives compensation for his injuries from a source wholly independent of the tortfeasor, the payment should not be deducted from the damages which he would otherwise collect from the tort-feasor." Black's Law Dictionary page 262 (6th Ed. 1990). "The collateral source rule provides that a wrongdoer is not entitled to have damages, for which he is liable, reduced by proof that the plaintiff has received or will receive compensation or indemnity for the loss from an independent collateral source." *Dubois v. Nye*, 584 P.2d 823, 825 (Utah 1978).

Note that in Utah, the courts have carved out an exception to the collateral source rule, for PIP benefits provided by Plaintiff's first-party coverage: "[T]he injured party should not plead for damages which are covered by PIP benefits, but should plead only for those damages for which he has not received reparation under his first party insurance." *Bear River Mut. Ins. Co. v. Wall*, 937 P.2d 1282, 1287 (1997), quoting *Allstate Insurance Co. v. Ivie*, 606 P.2d 1197 (Utah 1980).

⁴Quickbooks® is also a registered trademark of Intuit. I believe that other accounting packages could be utilized, such as those created by Peachtree Software, Inc.

⁵Principia Mathematica (1686), by English mathematician and physicist, Sir Isaac Newton.

⁶My cousin is a railroad adjuster, with access to in-house software which tallies medical charges, and performs countless other tasks. Some case management software packages can track medical bills and payments, as single entries. To account for the corresponding transactions, a user could enter the second entry singly. This would achieve the goal of placing both halves of a transaction into the system. Yet such software fails to show the nexus between the two transactions. Because of its capability for dual-entry, accounting software may offer advantages for tracking damages, and can be used in conjunction with case management software. However, the attorney should use software which he or she finds most useful.

⁷Albert Einstein created the *special* theory of relativity, then spent his remaining life pursuing a *general* theory of relativity. Similarly with our more mundane system of accounting: Mr. Shore helped create procedures to track a large array of damages, using a full spectrum of balance sheet accounts. "Man's mind stretched to a new idea never goes back to its original dimension." Oliver Wendell Holmes.

⁸Our sample data assumes that Plaintiff's injuries were caused by an automobile accident. Therefore, we use the rules applicable to such a case. If Plaintiff were injured through some other means, then a separate set of rules would apply. For example, if Plaintiff were the victim of medical malpractice, then this would invoke other exceptions to the collateral source rule.

⁹At the end of your predictions session, you can zero out each "WHAT IF?" account so your system contains only historical figures, with the exception of an "ESTIMATED Discount" account and an "ESTIMATED General Damages" account which you may choose to leave on the books as mere estimates, until actual amounts are ascertained through settlement or judgment.

¹⁰A balance sheet allows to financial views of Plaintiff's injury.

One window shows what Plaintiff is owed by others (assets). A second window shows what Plaintiff owes to others (liabilities), and what Plaintiff has "invested" in his or her claim both literally through Plaintiff's purchase of medications, and figuratively through the destruction of his or her automobile, through loss of wages, and through suffering of pain. Because these two views are of the same financial claim, the totals shown in each window are equal, and are said to "balance." Hence the financial statement which reflects these windows is termed a "Balance Sheet." The balance sheet obeys the Fundamental Accounting Equation which is as follows:

ASSETS
Cash in trust Due from Defendant
=
LIABILITIES
Due to Care Providers Due to Insurer-Subgratn. Due to Attorney
+
EQUITY
Paid by Plaintiff Less received by Plaintiff Less Attorney Fees Paid

¹¹The attorney keeps his or her own set of books, which mirrors the transactions shown in the Plaintiff's books along with the trust transactions shown in every other client's books. The high duties which govern the attorney trust account, and the specific accounting duties associated therewith, are beyond the scope of this article.

¹²In states with joint and several liability (such as California), all defendants may be considered liable, and from the Plaintiff's perspective no allocation need be made.

¹³This system depends upon the gathering of financial information. You must obtain medical bills and other financial documents. Then, you must enter them into the computer. Develop a system which works for you. When documents arrive at your office, place them with your client's file folder. Upon entry of this information into the computer, the document should be marked to show that it has been entered. When you negotiate a reduction of a lien, you must document this reduction in your file, and must flag this information so it gets entered in your system.

¹⁴To skillfully assist an injured plaintiff, the attorney must master principles of not just law, but also of such non-law areas as accident reconstruction, medicine, and time-value of earnings. Little time remains for the attorney to undertake the "clerical" task of tracking the medical bills and other damages. But every case will either be settled or tried. To accomplish either, the attorney must measure the magnitude of damages.

¹⁵Technically, two additional transactions arise on Plaintiff's books when Plaintiff incurs a medical expense:

First, an asset increases, consisting of amounts Due From Plaintiff's Insurer (either auto PIP or health). "Every policy of insurance . . . purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, . . . shall also include personal injury protection under [§31A-22-307]." Utah Code §31A-22-302(2). "Personal injury protection coverages and benefits include: (a) the reasonable value of all expenses for necessary medical . . . services, not to exceed a total of \$3,000 per person; . . . (6) Deductibles are not permitted with respect to the insurance coverages required under this section." Utah Code §31A-22-307(1).

Second, a contingent liability increases, consisting of amounts Due To Plaintiff's Insurer, on account of the subrogation lien which will inevitably arise upon payment of the medical bill by Plaintiff's insurer. If Plaintiff's insurer behaves as expected, these transactions will offset each other, and be of little importance.

For simplicity, these transactions are omitted. If the attorney encounters a first-party insurer which fails to pay its obligations, then these transactions can be tracked to ensure full recovery, both in the initial action and in the following bad-faith claim.

¹⁶Similar treatment is given to a co-payment from Plaintiff's pocket.

¹⁷See, *Allstate Insurance Co. v. Ivie*, 606 P.2d 1197 (Utah 1980). Note that if a health insurer had paid this amount, then

EXHIBIT "1"

TABLE OF SAMPLE TRANSACTIONS

TO ILLUSTRATE TRACKING OF MEDICAL EXPENSES AND SUBROGATION LIENS

FACT	LAW	ACCOUNTING
#1 Defendant causes an automobile accident. Plaintiff incurs a hospital bill of \$5,068.20.	1. Defendant is liable to Plaintiff for the \$5,068.20 medical expense. 2. Plaintiff owes \$5,068.20 to the hospital. (Hospital lien per Utah Code § 38-7-1.)	1. "Due from Defendant for Bodily Injury: Medical Expenses--Past" (an asset account) increases by \$5,068.20. 2. "Due to Hospital" (a liability account) increases by \$5,068.20. ¹⁵
#2 Plaintiff receives a bill from an orthopaedic surgeon for \$13,329.71.	1. Defendant is liable therefor to Plaintiff. 2. Plaintiff is liable therefor to the orthopaedic surgeon.	1. "Due from Defendant for Bodily Injury: Medical Expenses" (an asset account), increases by \$13,329.71. 2. "Due to Orthopaedic Surgeon" (a liability account), increases by \$13,329.71.
#3 When Plaintiff receives the bill from the Orthopaedist, Plaintiff makes a payment of \$500.00 from his or her own pocket. ¹⁶	Note: Due From Defendant remains unchanged, because of the Collateral Source rule.	1. "Due to Orthopaedic Surgeon" (a liability account), decreases by \$500.00. 2. "From Plaintiff (PD/LOE/Pain/Pocket)" (an equity account), increases by \$500.00.
#4 Plaintiff pays \$114.97 from his or her own pocket for a prescription pain killer.	1. Defendant is liable therefor to Plaintiff. 2. Plaintiff has "invested" \$114.97 from his or her own pocket.	1. "Due from Defendant for Bodily Injury: Medical Expenses--Past" (an asset account), increases by \$114.97. 2. "From Plaintiff (PD/LOE/Pain/Pocket)" (an equity account), increases by \$114.97.
#5 Plaintiff's auto insurer makes two payments to the Orthopaedist, in the amounts respectively of \$718.56 and \$2,281.44, totaling \$3,000.00.	1. An auto policy must offer minimum PIP/no-fault coverage of \$3,000.00 for medical bills. 2. Utah has exempted first-party P.I.P. benefits from the collateral source rule. ¹⁷	1. "Due to Orthopaedic Surgeon" (a liability account), decreases by \$3,000.00. 2. "Due from Defendant for Bodily Injury: Medical Expenses--Past" (an asset account), decreases by \$3,000.00.
#6 Plaintiff's Health Insurer reimburses Plaintiff \$500.00 for transaction #3, and \$114.97 for transaction #4, for a total of \$614.97.	1. A health insurer can make reimbursement payments to Plaintiff for his or her out-of-pocket expense. ¹⁸ 2. Upon payment, a health insurer receives a subrogation lien. ¹⁹	1. "From Plaintiff (PD/LOE/Pain/Pocket)" (an equity account), decreases by \$614.97. 2. "Due to Plaintiff's Health Insurer--Subrogation" (a liability account), increases by \$614.97.
#7A Plaintiff's Health Insurer pays \$9,030.67 to orthopaedist		1. "Due to Orthopaedic Surgeon" (a liability account), decreases by \$9,030.67. 2. "Due to Plaintiff's Health Insurer--Subrogation" (a liability account), increases by \$9,030.67.
#7B At the time the health Insurer pays \$9,030.67, the Orthopaedist agrees to waive \$32.00.		1. "Due to Orthopaedic Surgeon" (a liability account), decreases by \$32.00 2. "Waiver of Liabilities" (an equity account), increases by \$32.00.
#8A Health insurer pays hospital \$3,364.40.		1. "Due to Hospital" (a liability account), decreases by \$3,364.40. 2. "Due to Plaintiff's Health Insurer--Subrogation" (a liability account), increases by \$3,364.40.
#8B At time health insurer pays \$3,364.40 to hospital, hospital waives \$1,703.80. ²⁰	Health Insurers may enter contracts with "Preferred Providers," requiring that in exchange for payment of a specified amount for a service, the remainder of the bill must be forgiven. See Utah Code § 31A-22-617.	1. "Due to Hospital" (a liability account), decreases by \$1,703.80. 2. "Waiver of Liabilities" (an equity account), increases by \$1,703.80.

Exhibit "2A"

Report Showing Status of Medical Expenses

Date	Num	Name	Split	Amount
DueFromDefenForBodilyInjury				
Medical Expenses—Past				
1/1/97	#01	General Hospital	Due to Hospital	5,068.20
1/1/97	#02	Orthopaedic Group	Due to Orthopaedic S...	13,329.71
1/25/97	#04	Pharmacy	+From PL (PD/LOE/...	114.97
2/1/97	#05B	Dr. Ortho, MD	Due to Orthopaedic S...	-2,281.44
2/1/97	#05A	Dr. Ortho, MD	Due to Orthopaedic S...	-718.56
Total Medical Expenses—Past				<u>15,512.88</u>
Total DueFromDefenForBodilyInjury				<u>15,512.88</u>
TOTAL				<u>15,512.88</u>

Exhibit "2B"

Report Showing Status of Liens

Date	Num	Name	Split	Amount
Due to Hospital				
1/1/97	#01	General Hospital	Medical Expenses—P...	5,068.20
2/15/97	#08A	General Hospital	DueToPL'sHealthInsu...	-3,364.40
2/15/97	#08B		+Waiver of Liabilities	-1,703.80
Total Due to Hospital				<u>0.00</u>
Due to Orthopaedic Surgeon				
1/1/97	#02	Orthopaedic Group	Medical Expenses—P...	13,329.71
1/20/97	#03	Dr. Ortho, MD	+From PL (PD/LOE/...	-500.00
2/1/97	#05B	Dr. Ortho, MD	Medical Expenses—P...	-2,281.44
2/1/97	#05A	Dr. Ortho, MD	Medical Expenses—P...	-718.56
2/10/97	#07A	Dr. Ortho, MD	DueToPL'sHealthInsu...	-9,030.67
2/10/97	#07B		+Waiver of Liabilities	-32.00
Total Due to Orthopaedic Surgeon				<u>767.04</u>
DueToPL'sHealthInsurer—Subroga				
2/5/97	#06	Plaintiff	-Paid to Plaintiff	614.97
2/10/97	#07A	Dr. Ortho, MD	Due to Orthopaedic S...	9,030.67
2/15/97	#08A	General Hospital	Due to Hospital	3,364.40
Total DueToPL'sHealthInsurer—Subroga				<u>13,010.04</u>
TOTAL				<u>13,777.08</u>

the health insurer would have received a subrogation lien.

18 Once medical coverage is exhausted under Plaintiff's auto policy, Plaintiff's health insurer becomes liable for additional expenses.

19 This is not an article on the existence, perfection, and priority of liens. The attorney must accurately determine the legal consequences of a particular transaction, so that suitable accounting entries are made.

20 Additional complexities arise when a medical bill is paid through public assistance. When such benefits have been paid, government consent may be critical before suit or settlement, to avoid harsh results. See, e.g., *Camp v. Office of Recovery Services of Utah Dept. of Social Services*, 779 P.2d 242, 245 (Utah App. 1989) ("Accordingly, we conclude that the State is entitled to full, rather than equitable, reimbursement from a recipient for all its Medicaid expenditures when the recipient proceeds against a third party without the State's consent").

21 Obviously, this assessment remains confidential, for use by the attorney and client, in making decisions regarding the case.

22 "A prima facie case of negligence requires proof of four elements: (1) defendant owed plaintiff a duty of care; (2) defendant breached that duty; (3) defendant's breach of duty was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered damages as a result of defendant's breach of duty." (*Bansasine v. Bodell*, 927 P.2d 675, 676 (Utah App. 1996)).

Also, a contract claim arises of Defendant against his or her liability insurer. "Policies containing motor vehicle liability coverage may not limit the insurer's liability under that coverage below the following: (1)(a) \$25,000 because of liability for bodily injury to or death of one person, arising out

of the use of a motor vehicle in any one accident," Utah Code §31A-22-304.

23 In addition, a contract claim arises of Defendant against his or her insurer, under the liability insurance provisions of Defendant's auto insurance policy. "(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include: (1) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;" Utah Code §31A-22-302. "Policies containing motor vehicle liability coverage may not limit the insurer's liability under that coverage below the following: (1)(c) in the amount of \$15,000 because of liability for injury to . . . property of others . . ." Utah Code §31A-22-304. However, as Plaintiff's counsel we keep Plaintiff's books, rather than Defendant's.

24 For simplicity, future lost earnings are omitted from this example. However, future losses are similarly tracked, but should be placed into an accounted labeled as an ESTIMATE, to distinguish that account from those containing historical data.

25 As discussed above, technically two additional transactions arise between Plaintiff and his or her auto insurer. For simplicity, these transactions are not tracked herein.

26 "Every policy of insurance . . . purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, . . . shall also include personal injury protection under [§31A-22-307]." §31A-22-302(2). "Personal injury protection coverages and benefits include: (b)(1) the lesser of \$250 per week or 85% of any loss of gross income . . ." Utah Code §31A-22-307(1).

When Plaintiff's auto insurer pays lost earning benefits to Plaintiff, no subrogation lien arises. Instead, the amount due

Plaintiff from Defendant is decreased, just as when Plaintiff's auto insurer pays outstanding medical bills. See, *Allstate Insurance Co. v. Iyie*, 606 P.2d 1197 (Utah 1980) (declaring this result as to Personal Injury Protection payments). See also Utah Code §31A-22-301 (declaring that lost earning benefits are a species of Personal Injury Protection benefits).

Note that property damage payments are ordinarily made by Defendant's insurer (unless paid by Plaintiff's insurer under Comprehensive/Collision coverage). Therefore, at the outset, the Collateral Source rule is inapplicable to Property Damage payments, and they work to reduce the amount due from Defendant.

27 "(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. . . . Complete records of such account funds and other property shall be kept by the lawyer. . . (b) . . . a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property." Utah Rule of Professional Conduct 1.15. " . . . All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts." Comment to Rule 1.15.

28 In this example, these accounts are labeled "ACTUAL," to distinguish them from "WHAT IF" accounts. Before settlement has been achieved, the attorney can create a "WHAT IF" account, which assumes a certain settlement amount is received, and shows the resulting amount which would then be available to the client.

EXHIBIT "3"

TABLE OF ADDITIONAL SAMPLE TRANSACTIONS TO ILLUSTRATE TRACKING OF ALL ECONOMIC CONSEQUENCES OF THE ACCIDENT, INCLUDING THE FOLLOWING: LOST EARNINGS, PROPERTY DAMAGE, GENERAL DAMAGES, COMPARATIVE NEGLIGENCE AND OTHER RISKS TO RECOVERY, AND THE RECEIPT AND DISTRIBUTION OF SETTLEMENT MONIES

#9	Defendant claims that Plaintiff caused the collision. Attorney for Plaintiff estimates a jury would allocate fault 90% to Defendant and 10% to Plaintiff. However, attorney knows if a jury allocates at least 50% to Plaintiff, then the claim is completely barred under Utah law. Considering all this, attorney discounts the case value by the somewhat arbitrary amount of \$20,725.35 (which will result in the case being valued at the round number of \$51,500). ^{21 22}
#10	Plaintiff has property damage of \$1,400.00, arising from damage to Plaintiff's car. ²³
#11	Defendant's insurer pays Plaintiff \$1,400.00, to settle property damage.
#12	Plaintiff loses earnings of \$11,342.47. ^{24 25}
#13	Plaintiff's auto insurer pays Plaintiff \$4,800.00, as no fault coverage for wages lost. ²⁶
#14	Plaintiff suffers pain, and is unable to engage in his or her accustomed activities. Plaintiff's attorney estimates the monetary value of damage to be \$50,000.00.
#15	settlement monies of 51,500.00 are paid by Defendant's insurer to Plaintiff's attorney. ^{27 28}
#16	Under fee agreement, attorney acquires interest in 1/3 contingent fee, upon obtaining settlement funds.
#17A	From settlement funds, attorney sends check to Orthopaedist for \$690.34.
#17B	With acceptance of \$690.34, Orthopaedist waives \$76.70.
#18A	From settlement monies, attorney writes check to Plaintiff's auto insurer for \$7,846.90.
#18B	By accepting \$7,846.90, health insurer agrees to waive \$5,208.60.
#19	Earlier, attorney filed suit and demanded a jury, at a cost of \$170.00.
#20	Attorney writes check to himself for fees earned and out-of-pocket costs fronted, totaling \$17,336.67.
#21	At same time, attorney writes check to Plaintiff to distribute residual trust monies of \$25,671.55.

Exhibit "4A"

Report Showing Projected Settlement

		Jul 30, '97
ASSETS		
Current Assets		
Checking/Savings		
Cash in AttyTrustAcct		0.00
Total Checking/Savings		0.00
Other Current Assets		
DueFromDefenForBodilyInjury		
Medical Expenses--Past	15,512.88	
LossOfEarnings--Past	6,542.47	
General Damages	50,000.00	
Court Costs Due From Defendant	170.00	
DiscountForRisk(<0)	-20,725.35	
ReceivedForDF--BodilyInj	-51,500.00	
Total DueFromDefenForBodilyInjury		0.00
DueFromDF forPropDamage		0.00
Total Other Current Assets		0.00
Total Current Assets		0.00
TOTAL ASSETS		0.00
LIABILITIES & EQUITY		
Liabilities		
Current Liabilities		
Other Current Liabilities		
Due to Hospital		0.00
Due to Orthopaedic Surgeon		0.00
DueToPL'sHealthInsurer--Subroga		0.00
Due to Attorney		0.00
Total Other Current Liabilities		0.00
Total Current Liabilities		0.00
Total Liabilities		0.00
Equity		
+From PL (PD/LOE/Pain/Pocket)	63,357.44	
+Waiver of Liabilities	7,021.10	
-DamagesNotRecoverable	-37,892.02	
-Paid to Plaintiff	-32,486.52	
Total Equity		0.00
TOTAL LIABILITIES & EQUITY		0.00

Exhibit "4B"

Report Showing Detail of Amounts Paid to Plaintiff

Date	Num	Memo	Split	Amount
-Paid to Plaintiff				
2/5/97	#06		DueToPL'sHealthInsurer--...	-614.97
3/2/97	#11	Paid by Defendant's l...	DueFromDF forPropDama...	-1,400.00
5/1/97	#13	loe	LossOfEarnings--Past	-4,800.00
7/30/97	#21	distribution of residual...	Cash in AttyTrustAcct	-25,671.55
Total -Paid to Plaintiff				-32,486.52
TOTAL				-32,486.52

Exhibit "5"
Report Showing Itemization of Damages

Date	Num	Name	Amount
DueFromDefenForBodilyInjury			
Medical Expenses--Past			
1/1/97	#01	General Hospital	5,068.20
1/1/97	#02	Orthopeadic Gr...	13,329.71
1/25/97	#04	Pharmacy	114.97
2/1/97	#05B	Dr. Ortho, MD	-2,281.44
2/1/97	#05A	Dr. Ortho, MD	-718.56
Total Medical Expenses--Past			15,512.88
LossOfEarnings--Past			
4/1/97	#12		11,342.47
5/1/97	#13	Plaintiff	-4,800.00
Total LossOfEarnings--Past			6,542.47
General Damages			
6/1/97	#14		50,000.00
Total General Damages			50,000.00
Total DueFromDefenForBodilyInjury			72,055.35
DueFromDF forPropDamage			
3/1/97	#10		1,400.00
3/2/97	#11		-1,400.00
Total DueFromDF forPropDamage			0.00
TOTAL			<u>72,055.35</u>

Exhibit "6"
Report Showing Disbursements to be Authorized by Plaintiff

Type	Date	Num	Name	Memo	Amount
Cash in AttyTrustAcct					
Deposit	7/10/97	#15	Plaintiff and his attorney	settlement check	51,500.00
Check	7/15/97	#17A	Dr. Ortho, MD	90%of lien amt, a...	-690.34
Check	7/20/97	#18A	Health Insurance Company	pymt in full of sub...	-7,801.44
Check	7/30/97	#20	Attorney	fees 1/3of\$51,50...	-17,336.67
Check	7/30/97	#21	Plaintiff	distribution of resi...	-25,671.55
Total Cash in AttyTrustAcct					0.00
TOTAL					<u>0.00</u>

First One Hundred Women Attorneys 1872–1976



On January 14, 1998, the Utah State Bar held a reception and dinner to honor the pioneering spirit of Utah's First Hundred Women attorneys and to celebrate women in the profession today. Over 950 guests and dignitaries gathered to honor those women attorneys for their leadership, courage and tenacity in paving the way toward a promising future for women at the Bar. The event was hosted by Debra J. Moore who was the Chair of Utah's First Hundred Committee and included remarks from Bar President Charlotte L. Miller, Governor Michael O. Leavitt and Salt Lake City Mayor, Deedee Corradini. The mayor and the governor each proclaimed January

14th as First Hundred Day and presented signed proclamations to Ms. Miller to commemorate the tribute.

James B. Lee was presented the Dorathy Merrill Brothers Award for his contributions in promoting women in the profession. Chief Justice Michael B. Zimmerman congratulated the contributions of the First Hundred and First Hundred honorees Irene Warr and Justice Christine M. Durham represented the group in comments at the dinner. Judge Judith M. Billings introduced the keynote speaker, Roberta Cooper Ramo, former President of the American Bar Association, who spoke of the virtues of hard work and commitment.

The territorial Utah Supreme Court admitted the first women in 1872, and the Bar reached the 100 mark over a hundred years later, in 1976. Approximately half of Utah's First Hundred women attorneys, including many prominent attorneys in active practice today, were admitted in the early 1970's. With the admission of 28 women who passed the bar examination in 1976, the Bar had admitted a total of 120 women, all of whom were included among the night's honorees. Today, following the pioneering steps of the first hundred, women comprise about 17% of the Bar's membership.

First Hundred Dinner Programs Available

The Utah State Bar has a limited number of programs available from the January 14th reception and dinner which may be picked up while supplies last at the receptionist desk at the Utah Law & Justice Center. The 88-page program includes biographical information on each of the First Hundred with photographs, comments from many of the women about their mentors in the legal profession and careers and quotes regarding their experiences in the practice of law.

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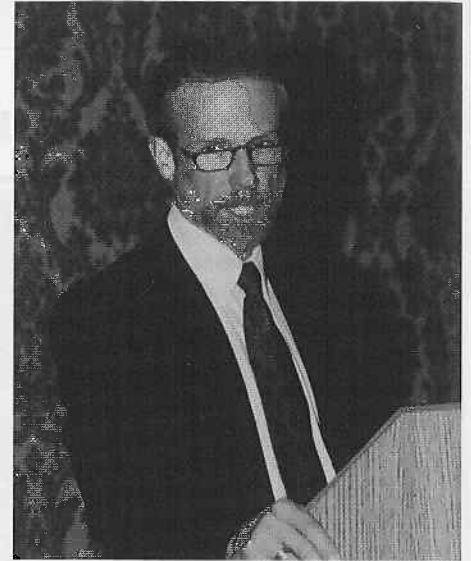
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Honorable Michael O. Leavitt



Roberta Cooper Ramo, Former President,
American Bar Association (1995-1996).



Chief Justice Michael D. Zimmerman
*"You . . . have taken your place in the sun,
a place you will never again be denied."*



Honorable Judith M. Billings



Honorable DeeDee Corradini



Honorable Christine M. Durham



Irene Warr



Debra J. Moore



Charlotte L. Miller and James B. Lee

Remarks of Chief Justice Michael D. Zimmerman Before First 100 Dinner of Utah State Bar January 14, 1998

Thank you for the introduction. It is a privilege and a pleasure to be here tonight. My interest in women's progress in the legal profession and in the broader society is long standing. My three daughters deserve nothing less of me. Two of them are here tonight. I thought this was a good opportunity for them to see some fine role models, and to better understand what it takes to be a professional woman.

I would like first to congratulate Jim Lee on receiving the Dorathy Merrill Brothers Award. It is a worthy recognition for one who has worked quietly but persistently to advance women in the profession. As Charlotte noted, this is only one of many things Jim has done for the legal community and the broader public.

I would be remiss if I did not also congratulate Charlotte Miller for having the great idea of putting on this dinner to honor the First 100, and Debra Moore and her committee for putting this all together. The measure of this idea's success is that I have never attended as large a gathering of Utah lawyers and their friends. Each of you honored tonight should take this large audience as a firm testament that you, and all women lawyers, have taken your place in the sun, a place you will never again be denied.

Things are much better for women in the law today than was the case even 25 years ago, much less 125 years ago. To illustrate:

- the number of women in the bar has gone from 119 in 1976, to 1267 in 1998. Women now constitute nearly 19% of the bar membership, and 17% of the active practitioners.
- the number of women graduates from the Utah law schools is growing to the point where complete parity cannot be far away.
- as women gain years of experience and advance within the profession, they are



becoming a large presence in all areas of the law. Look around you at the members of the bench, law firms, and the government bar. Although their numbers may still be too few, their presence is significant, appreciated, and most importantly, growing. The trend is firmly set.

- gender bias, which was openly defended and practiced in the courts, the law firms, the bar, and the general business community little more than a decade ago is no longer politically or socially acceptable. Your award to Jim Lee is evidence that in the large firms, once bastions of gender bias, such bias no longer permissible.
- in the judicial system, we have seen a dramatic improvement in how women lawyers, litigants, and employees are treated over the years since the Gender and Justice Task Force report was issued in 1990. Heightened attention to the issue has gone a long way to remedy unconscious sexism.
- within the bar, the decline of gender bias is evidenced by the fact that we have now had two women as bar president in seven years. It is no longer a remarkable thing to have a woman president. The Utah bar is especially lucky, though, to have had as

president two remarkable women.

- these developments are mirrored nationally. Ms Cooper-Ramo, our speaker tonight, was the first woman president of the ABA. (Although it did take the ABA five years longer than the Utah Bar to get on the bandwagon.) We have women attorney generals of both the United States, and of Utah, and ten of our fifty state chief justices are women.

These are all positive developments. And they are a long way from the horror stories any number of women in this room could tell. The experience of the recent past is encouraging. And I think it bodes well for the future. The sheer number of women entering the legal procession assures that you will continue to improve your position and prospects. You have the critical mass to demand change.

That is one side of this evening's theme – the successes women are now enjoying. But there is another theme for this evening, one not as up beat. Things are much better, but they are far from ideal. I was struck by remarks of Lois Baar in an article I read in the Intermountain Commercial Record about the aims of this evening. Lois said, in effect, that this dinner should serve as an occasion to refresh our collective memory, to make sure that women lawyers don't forget, and that the newest of you know, how hard the struggle for gender equity was, how recent your successes have been. And, perhaps more importantly, to realize that the struggle is far from over and will likely not end anytime soon.

And I take the liberty of adding, as well, that this dinner should serve to unify the generations of women lawyers present tonight. The women in the profession need to continue to advance other women and help them progress. Gender unfairness may have become more subtle, and the issues may have shifted, but they are still present.

I have only a brief time here tonight, but

in what remains, I would like to take my cue from Lois and try to point out what I see as a principle challenge that confronts women lawyers, a challenge that they face because of certain fundamental characteristics of the legal culture and, to a degree, the larger culture. I choose this issue from among many because it lies at the core of many of the complaints I hear from women lawyers, and from some of their more award male colleagues.

The challenge of which I speak is addressing and alleviating the conflict between home and work. As an example, let's look first at law firm culture.

Although women may be a common feature of law firms now, law firm culture is still shaped by its recent history: it is defined by the traditional male attitudes toward their professional work roles. Put succinctly, a male lawyer's first concern, indeed some would say his only concern, traditionally has been his career. Children and family were the wife's responsibility.

Today, women may have a larger presence in firms, but they are expected to conform to the firm's male defined culture. Work is job one. Children and family are someone else's job, be it a partner, a nanny, or other child care provider. Many of you women have succeeded in this environment, but some of the comments you sent in to the dinner committee illustrate, you know it has been at a regrettably high cost to your personal life.

Some may say that men pay the same price, and have for years. That may be true in the abstract. But I think the pressure the law firm job-first culture places on women is unique because of the values of the culture outside the law firm. In that wider world, the woman is still expected to be responsible for the health of child and family. Women who don't conform to this expectation are judged harshly, and they may internalize those cultural judgments to their own psychological detriment.

There is little escape from this clash of cultural expectations. Even if a woman is lucky enough to find a partner who is willing to share the family maintenance responsibilities equally – and that is a rare thing – the woman has still not put her job first, as the firm culture expects.

If I were to generalize from this one example, I would say that the long range challenge for women, and for men, is to evolve a law firm culture that reflects gender

neutral, family friendly values. This would necessarily be one that, among other things, would permit a healthier allocation of time and energy between family and work.

Some would say that this is not possible, because the larger culture is riddled with gender bias and gender role assumptions. I would reply that it is true the legal profession is not separate from the wider culture, and that it cannot avoid its notions of appropriate gender roles. But certainly to the extent that the law firm culture is a historical remnant from a time when only men were lawyers, there is no reason it cannot be reshaped to match the present demographics and values of the members of the bar. I am an optimistic person. I think that this will happen. The only question is how long it takes, and how much more alienation of both

women and men occurs in the process.

In conclusion, to each of you, I would say, continue to exert pressure to improve on the parts of the legal culture over which you have any influence. You recognition of Jim Lee tonight acknowledges that one person can make a difference. The effects of the Gender and Justice Task Force on the judiciary and beyond shows that bringing awareness to people of good will can alter their behavior. And this dinner shows that there are lots of people out there listening who care about the issues of women lawyers.

I suspect it is because they are not just the issues of women lawyers, but they are all our issues.

Thank you.

The First Hundred Committee thanks Richard Y. Merrell of Salt Lake City for recently informing it that his sister Ida Merrell was admitted to the Utah State Bar in 1947 and was among Utah's first hundred women attorneys. Because the Committee was previously unaware of Ida Merrell, the following photograph and biography did not appear in the commemorative program for Utah's First Hundred Women Attorneys – A Celebration of Women in the Profession on January 14. We regret the omission.



IDA MERRELL

Born in 1916 in Brigham City, Utah, Merrell received a scholarship from the Business and Professional Women's Club to attend law school at National Law University in Washington, D.C., where she received her LL. B. in about 1946. Merrell returned to Utah and was admitted to the Utah State Bar in 1947. She then engaged in private practice in Brigham City, was associated with David J. Wilson, a lawyer candidate for the U.S. Congress, and was employed as a law clerk for the Hon. George Latimer on the Utah Supreme Court.

In 1951, Merrell moved to Washington D.C. where she continued to work for Judge George Latimer on the U.S. Court of Military Appeals. Six years later, Merrell returned to Brigham City, where she was elected to the city bench in 1957. She served as city judge until her death in 1961.

Commission Highlights

During its Annual Meeting on December 5, 1997, held in Salt Lake City, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board approved the minutes of the October 24, 1997 meeting.
2. Charlotte Miller reported that a committee had been established following the Access to Justice Task Report to evaluate the appropriateness and the manner by which legal assistants could be regulated under the umbrella of the Supreme Court.
3. Charlotte Miller reported that Debra Moore and her committee were well underway in gathering information regarding the first hundred women lawyers in the state, which has included seeking biographical information and photographs and other materials.
4. Francis Wikstrom reported on the American Bar Association's Leadership Conference attended last month by Charlotte Miller, John Baldwin, Jim Jenkins and himself.
5. Charlotte Miller distributed a memorandum regarding a proposed amendment to the Supreme Court's Mandatory Continuing Legal Education rule which would allow continuing legal education credit for lawyers who provide seminars to legal assistants. Charlotte mentioned the MCLE Board suggested that the Commission petition the Supreme Court directly for the changes. The Board voted to petition the Court to adopt the proposed language.
6. Brent Manning, Chair of the Courts & Judges Committee, appeared to lead a discussion regarding a recently published informal opinion No. 97-7 issued by the Judicial Ethics Advisory Committee addressing the appropriateness of certain contacts between lawyers and the judiciary. The Board approved a motion to request the Judicial Council to receive the Commission's input and to establish an ad hoc committee

of Commissioners to work with Brent Manning to draft written comments on the informal opinion and to submit those comments to the Judicial Council.

7. The Board voted to present the Distinguished Service Award to Suzanne Marychild, Chair of the Lawyers Helping Lawyers Committee.
8. Ben Sims, Chair of the Labor & Employment Law Section, appeared to report on the activities of the section including CLE seminars and luncheons.
9. John Baldwin referred reports regarding the various Bar Departments including the Office of Attorney Discipline and the pro bono coordinator.
10. Baldwin indicated that Billy Walker has just been hired as the Bar's new Chief Disciplinary Counsel and would begin with the office on January 5.
11. The Board approved the Legal Assistants Division Bylaws.
12. Budget & Finance Committee Chair, Ray Westergard, distributed a copy of the November financial reports in addition to referring to the October financial reports.
13. The Board approved the recommendation of the Budget & Finance Committee to bank with Zions First National Bank.
14. Charlotte Miller circulated copies of nominations that had been received for the newly named Dorathy Merrill Brothers Award for promoting the interest of women in the profession.

The Commission reviewed the nominations, discussed several of those names, and ballots were distributed to tally finalists for a vote. The Commission selected James B. Lee as the award recipient.

15. The Board approved Ethics Advisory Opinion No. 97-11, dealing with whether or not it was ethical for an attorney to finance the expected costs of a contingent fee case with a non-recourse promissory note secured only by the attorney's interest in the contingent fee for the case.
16. John Baldwin distributed a letter written by an attorney to the Supreme Court Rules Committee requesting that the court impose a rule requiring malpractice insurance of all licensing attorneys.
17. President-Elect Jim Jenkins distributed copies of memoranda regarding the various strengths and weaknesses of the Park City site and the advantages and disadvantages of holding the 1999 Annual Meeting there. The Board voted that the Park City Annual Meeting be postponed to a later date when the facilities would accommodate our size group and that the 1999 Annual Meeting be held in Sun Valley.

A full text of minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

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Discipline Corner

INTERIM SUSPENSION

On January 16, 1998, the Honorable Boyd Bunnell, Senior District Court Judge, presiding in the Fifth Judicial District Court, entered an Order of Interim Suspension suspending Gary Pendleton from the practice of law pending final disposition of the disciplinary proceeding.

The Court conducted a hearing on January 10, 1998, on the Utah State Bar's Petition for the Interim Suspension of Pendleton From the Practice of Law Until Final Conclusion of the Pending Disciplinary Action. The Court took the matter under advisement and on January 16, 1998, entered an order finding that the evidence clearly showed that Pendleton "was a heavy user of methamphetamine for a considerable period of time."

At the hearing, one of Pendleton's clients stated that he supplied Pendleton with methamphetamine "in rather large quantities from approximately June of 1995 to November of 1996 in the neighborhood of 15 to 17 times." Pendleton "admitted that he was using methamphetamine for approximately 1 1/2 years prior to the filing of the criminal charges against him but denie[d] that he offered or agreed to trade his legal services for drugs. He further state[d] that he had not used the drug for several months." The Court found the "the evidence submitted to the Court clearly demonstrated that Pendleton had a general reputation among the drug culture in and around St. George as an attorney who used drugs and who performed legal services in exchange for cash and methamphetamine."

Three of Pendleton's clients whom he represented in criminal cases stated that Pendleton "agreed to represent them in their respective criminal cases and agreed to take part payment in the form of methamphetamine." Another client, whose statement was introduced into evidence by Pendleton, covered in detail "a time when she was in [Pendleton's] office as his client and he produced methamphetamine and paraphernalia for its use from his desk and that they jointly ingested the drug for over an hour." The Court found that "the fact that [Pendleton] used the drug with his clients at their home and in his office on more than one occasion further substantiates the allegation that he did trade legal

services for methamphetamine."

Another client related an instance in which a close companion of Pendleton's "came to him to get a supply of the drug and didn't have cash to pay for it and was told it was for [Pendleton] and that the price would be credited against his legal services' bill." Mr. Pendleton's companion tried for some time to get Pendleton on the telephone, without success, to verify for the client the stated arrangement. The client, "who made and supplied methamphetamine to Pendleton over a period of time, further stated while he was in custody on a criminal charge that [Pendleton], who was his attorney, told him 'They couldn't wait for me to get out, because they're getting this crappy Mexican ephedrine. It's just a low grade. And they can't wait for me to get out.'"

The videotape offered as evidence by the Office of Professional Conduct showed Pendleton and his "close lady friend" ingesting lines of methamphetamine at the home of clients of Mr. Pendleton. The tape was taken by the client without Pendleton's knowledge for the client's purpose of having some insurance that Pendleton would follow through and defend him in court.

The Court found that "[t]he evidence is overwhelming and well substantiated that [Pendleton] offered to and did exchange his legal services for methamphetamine and did so with at least four separate clients. The Court took judicial notice that a jury, on December 12, 1997, found Pendleton guilty of possession and use of a controlled substance, a 3rd degree felony."

Pendleton further admitted at the hearing on the Petition for Interim Suspension that the judge in the criminal case had ordered him to submit to chemical tests to see whether drugs were present in his system. Pendleton admitted that he had never had the tests performed. He stated that he went to the office of the Adult Probation and Parole on two different occasions and they refused to perform the tests without a court order. He further stated that he went to a private laboratory but found that the costs were prohibitive. The Court noted that if Pendleton "was clean of drugs and wanted that fact established his attorney could, with little effort and in one day, obtain the order from Judge Roth by way of fax or telephone." The Court noted that Pendleton "knew the significance of the results of such tests when he is awaiting sentence on a criminal charge and has a disbarment proceeding pending and

that the simple effort or the cost to see that the tests were performed would be justified and not prohibitive."

The Court found "by clear and convincing evidence that Pendleton has repeatedly possessed, distributed and accepted a controlled substance in exchange for legal fees; that while defending persons accused of criminal acts, he has participated with those persons in furthering violations of the law and has encouraged those clients to violate the same laws of which they are accused of violating; that by these acts he has violated the Rules of Professional Conduct." The Court further found that he had "demonstrated a callous disregard for the law, his clients and the public and if allowed to continue in the practice of the law he will and does now pose a substantial threat of irreparable harm to the public."

Pursuant to Rule 26 of the Rules of Lawyer Discipline and Disability, Pendleton had thirty days from January 16, 1998 within which to wind-up his practice.

SUSPENSION

On December 22, 1997, the Honorable Anne M. Stirba, Third Judicial District Court, entered an Order of Discipline: Suspension, suspending Frank J. Falk from the practice of law for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.5(a) and (b) (Fees), 1.16(d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.4(a), (c) and (d) (Misconduct) of the Rules of Professional Conduct. The suspension was held in abeyance, and places Falk on supervised probation for one year. Falk was also ordered to pay restitution. The Order was based on a Discipline By Consent and Settlement Agreement entered into by Falk and the Office of Professional Conduct.

Fifteen clients retained Falk to represent them in various types of matters including representation in divorces, modification of divorce decrees, collection of child support, visitation, paternity actions, protective orders, and one case against the Utah Industrial Commission.

The clients alleged, and Falk agreed, that in many of the cases Falk:

- failed to competently represent the client by using reasonably necessary legal knowledge, skill, thoroughness and preparation;
- failed to diligently pursue the agreed

goals of the clients representation by making timely discovery responses and by consulting with the clients about what response, if any, could be made;

- failed to act with reasonable diligence and promptness in responding to discovery and in promptly informing the clients of the outcome of their proceedings;
- failed to respond to the clients' reasonable requests for information and keep them reasonably and truthfully informed about the status of their matters, and to explain the matters to the extent necessary to enable them to make informed decisions; and
- upon termination of his representation of several clients, he failed to give them notice of his intent to withdraw and failed to provide the clients with a copy of their client files.

In some cases Falk failed to perform services at all and failed to return the retainer to the clients.

SUSPENSION

On January 16, 1998, the Honorable John A. Rokich, Third Judicial District Court, entered an Order of Suspension and Probation, suspending Don L. Bybee from the practice of law for eighteen months for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 3.3(a)(1) (Candor Toward the Tribunal), 4.2 (Communication with Person Represented by Counsel), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) and (d) (Misconduct) of the Rules of Professional Conduct. The suspension was stayed, and places Bybee on supervised probation for eighteen months. Bybee was also ordered to pay costs to the Bar and to attend the next scheduled Ethics School of the Utah State Bar. The Order was based on a Discipline By Consent and Settlement Agreement entered into by Bybee and the Office of Professional Conduct.

The Office of Professional Conduct received five complaints alleging misconduct, which ultimately resulted in the filing of the formal complaint. In the first informal complaint, a client retained Bybee to defend him and file a counterclaim in a Small Claims action. Bybee filed an Answer and Counterclaim, but missed two scheduled hearings and Default was subsequently entered against the client. Later, Bybee filed a Motion to Reconsider the

Judgment wherein he alleged that neither he nor his client received notice of one of the hearings. A Supplemental Order hearing was held, and Bybee failed to appear. Bybee then failed to accurately inform the client of the true status of his representation.

In a second matter, Bybee was ordered by Judge pro tem Carlos A. Esqueda to prepare an Order in a matter in which Bybee represented the plaintiff. At that hearing, Judge Esqueda made certain rulings. When Bybee submitted an Order and Judgment, Affidavit of Costs and Attorney Fees, and proposed Findings of Fact and Conclusions of Law, the documents misrepresented Judge Esqueda's rulings. After reviewing the documents filed by Bybee, the Honorable Judith S.H. Atherton, District Judge of the Third Judicial District Court, filed a complaint with the Utah State Bar alleging that Bybee had significantly misrepresented the ruling of the Court, including but not limited to awarding unauthorized attorney fees plus interest to himself, attempting to include an unauthorized dismissal of an underlying judgment against Bybee's client, thus attempting to reinstate without authority, the client's dismissed action.

In a third matter, Bybee was retained to represent a client in a divorce action. During the course of the representation, Bybee, with his client, spoke to the defendant in the matter for several minutes regarding the subject of the representation. Although Bybee placed a call to the defendant's attorney so that she could participate in the conversation, she was not available, Bybee did not have consent to speak to the defendant. Based on Bybee's violation of Rule 4.2 Bybee was disqualified by the Commissioner and the Judge from representing his client. In statements to the Court, Bybee misrepresented what occurred in his conversation with the represented party.

In the fourth matter, Bybee represented a client in an appeal from a small claims action. A hearing was held in the small claims appeal before the Honorable Judith S.H. Atherton. On that day, Bybee raised issues that led Judge Atherton to continue the appeal of the small claims matter so that counsel could provide the Court with information regarding the custody status of a child and other issues concerning the civil liability of Bybee's client for actions committed by her child. Bybee knew and was aware of the continued trial date and failed to appear at the trial. At some point, Bybee prepared a "Notice of

Withdrawal." He did not notify his client of the withdrawal, nor did he file the Notice with the Court until March 3, 1997. He dated the document February 6, 1997, and dated his certificate of mailing February 8, 1997. Bybee failed to notify the Court of his withdrawal prior to the trial. Although the certificate of mailing filed with the Court on March 3, 1997, stated that Bybee had given notice to his client of the "Notice of Withdrawal," there had been no notice to the client, and Bybee knew this because he had received the envelope returned to him showing that his client had never received the "Notice of Withdrawal."

In a fifth matter, Bybee represented a client in a civil matter. The dispute in that civil matter became a criminal prosecution in the state of Missouri. Bybee's client was arrested and jailed in Utah based on an arrest warrant issued in the Missouri matter. In March 1994, Bybee filed a Writ of Habeas Corpus to prevent the extradition of his client to Missouri. In April, the Honorable Pat Brian ruled against the State regarding the writ and the client was released. The Office of Professional Conduct dismissed the complaint, but on appeal by the complainant regarding the Chair of Ethics and Discipline Committee at the Utah State Bar, the dismissal was reversed and remanded to the Office of Professional Conduct for further investigation.

SUSPENSION

On January 20, 1998, the Honorable Timothy R. Hanson, Third Judicial District Court, entered an Order of Discipline: Suspension, suspending Stanford V. Nielson from the practice of law for violation of Rules 5.5(a) (Unauthorized Practice of Law), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct) of the Rules of Professional Conduct. The suspension will commence on July 1, 1998, for a period of thirty days following Nielson's current suspension through June 30, 1998. The Order was based on a Discipline By Consent and Settlement Agreement entered into by Nielson and the Office of Professional Conduct.

In October of 1994, a court reporter performed reporting services for Nielson. Nielson failed to respond to the court reporter's repeated written demands for payment for more than one year, eventually compelling the court reporter to seek and obtain a judgment for her fees through a

Small Claims action. Nielson failed to pay the judgment amount, forcing the court reporter to file further proceedings to obtain partial satisfaction of the judgment, which was not finally satisfied for more than seven months after the court reporter filed a complaint with the Office of Professional Conduct. Nielson failed to respond to repeated requests from the Office of Professional Conduct for information concerning the court reporter's complaint.

Additionally, Nielson was suspended for non-payment of Bar dues, effective September 3, 1996, and notified by the Bar of his suspension on September 5, 1996, but did not pay his delinquent dues until September 30, 1996. During the period of his suspension and while he was aware of the suspension, Nielson practiced law by appearing in court on behalf of a client. Furthermore, Nielson failed to cooperate with the Bar's investigation.



Utah State Bar

Notice of Amendments to Rules

The following rules have been amended by the Supreme Court or Judicial Council with an effective date of April 1, 1998, unless otherwise indicated. The information is intended to alert Bar members to pending changes that may be of interest and not an inclusive list of all changes made. Further information may be found in the following sources:

- Code-Co. Web Site:
<http://www.code-co.com/utah/>
- *Intermountain Commercial Record* (February 6, 1998)
- Pacific Reporter Advance Sheets
- Utah State Courts Web Site:
<http://courtlink.utcourts.gov/rules/>

RULES OF CIVIL PROCEDURE

Rule 10. Form of pleadings and other papers. Adds requirement that plaintiff file a completed cover sheet with the complaint.

Rule 17. Parties plaintiff and defendant. Recognizes change in divorce statute which requires parties to be referred to as "petitioner" and "respondent."

Rule 60. Relief from judgment or order. Removes paragraph (b)(4) due to ambiguity and possible conflict with rules permitting service by means other than personal service.

Rule 64C. Attachment. Gives court more flexibility in paragraph (b) establishing the amount of the undertaking to provide adequate security to the defendant for all damages and costs.

Appendix of Forms. Many new forms have been adopted.

RULES OF CRIMINAL PROCEDURE

Rule 8. Appointment of counsel (approved as emergency rule effective July 1, 1997). Adds provisions governing qualifications for appointment as counsel for post-conviction proceedings in capital cases.

Rule 12. Motions. Changes language in Rule 12(b)(2) from "motions concerning the admissibility of evidence" to "motions to suppress evidence."

Rule 26. Appeals. Adds provisions for appeal by the prosecution from dismissal of a felony information following a refusal to bind defendant over for trial and from non-final orders dismissing or quashing part of a felony information if the appellate court decides that appeal would be in the interest of justice.

RULES OF APPELLATE PROCEDURE

Rule 9. Docketing statement. Adds motions under Utah Rules of Criminal Procedure 24 and 26 to Rule 9(c)(1).

Rule 11. The record on appeal. Requires clerks to number only the cover pages of depositions and transcripts.

Rule 23B. Motion to remand for determination of ineffective assistance of counsel. Adds requirements for motions requesting findings of fact from the trial court on a claim of ineffective assistance of counsel. Requires identification of factual issues to be addressed on remand.

Rule 24. Briefs. Indicates how references to depositions and transcripts should be made.

Rule 27. Form of briefs. Adds proportional spacing and monospacing typeface requirement for briefs, including footnotes.

RULES OF JUVENILE PROCEDURE

Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search warrants. Adds provision for telephonic issuance of warrant during non-business hours or under exigent circumstances.

CODE OF JUDICIAL ADMINISTRATION

Rule 3-414. Court security (effective May 1, 1998). Implements recommenda-

tions of the Court Security Task Force to 1) require security plans for justice courts; 2) permits local courts to allow designated officials to carry a firearm in a courthouse; and 3) clarify the responsibility for appointment and supervision of bailiffs.

Rule 4-201. Record of proceedings. Establishes that an audio recording system may be used to maintain the official verbatim record in small claims cases. Requires one original recording to be made when an audio recording system is used to maintain the official verbatim record.

Rule 4-510. Alternative dispute resolution. Amends notice requirements when parties use the ADR process.

Rule 4-608. Trials de novo of Justice Court proceedings in criminal cases. Changes the venue provision for the trial de novo of justice court criminal proceedings to the district court of the county nearest the justice court in which the original proceedings were heard.

Rule 4-803. Trials de novo in small claims cases. Changes the venue provision for the trial de novo of justice court small claims proceedings to the district court of the county nearest the justice court in which the original proceedings were heard. Changes references in paragraph (2) from "justice court" to "court issuing the judgment."

OTHER CODE OF JUDICIAL ADMINISTRATION RULES

Rule 1-205. Standing and ad hoc committees.

Rule 3-104. Presiding judges.

Rule 4-906. Guardian ad litem program.

Rule 4-910. Sanctions for denial of child visitation. (deleted)

Rule 9-101. Board of Justice Court Judges.

Trial Academy 1998 Continues on March 25 "Part II-Opening Statements"

On March 25, 1998, the second session of the Litigation Sections' popular "Trial Academy" will be held at the Law & Justice Center from 6:00 to 8:00 p.m. (Registration begins at 5:30 p.m.) The topic for Part II is "Opening Statements." Prominent local trial attorneys will lecture on the applicable law and rules and will demonstrate opening statement techniques before a federal and state judge. Comprehensive written materials will be provided. Note that it is *not* necessary to have attended the first session on jury selection in order to benefit from the program.

The Trial Academy is one of the Bar's most useful CLE programs and consists of

six evening seminars held every other month over the course of a year taught by top-notch trial practitioners and focusing on basic trial skills. This is THE course of any lawyer new to trial practice who wants focused, nuts-and-bolts training in conducting a civil jury trial from start to finish.

Attendees will receive 2 CLE credit hours and the seminar qualifies for NLCLE credit. The cost is \$25 per session for Litigation Section members and \$35 for non-members. Enrollment is limited and therefore pre-registration is strongly recommended. To register call Monica Jergensen, CLE Coordinator for the Utah State Bar, at 297-7024.

Legal Aid Society Receives Partnership Grant from Salt Lake County Bar Association and Snow, Christensen & Martineau



John Lund, of Snow, Christensen & Martineau; Toby Brown, President of Board of Trustees; Stewart Ralphs, Executive Director; Bruce Olsen of Salt Lake County Bar

The Salt Lake County Bar Association and the law firm of Snow, Christensen & Martineau have joined together to donate \$7,500 to Legal Aid Society of Salt Lake.

"The \$7,500 grant comes at a critical time. Legal Aid Society is upgrading the computer system so that we can be ready for electronic filing and digital signatures offered at the new courthouse sometime this summer" states Board President, Toby Brown. "This advanced technology will streamline the organization, allowing the staff to be much more efficient."

A formal check presentation was made to Legal Aid Society on January 6, 1998 at the last Salt Lake County Bar Association meeting. Five thousand five hundred dollars were donated by the Salt Lake County

Bar and the remaining two thousand needed came from Snow, Christensen & Martineau. To round out the picture, Complete Concepts, ValCom and Morgan Consulting will donate their time and expertise to set up the new system.

Legal Aid Society provides no cost legal representation to low-income individuals with divorces, child custody and support, visitation, guardianship and modification of orders. Legal Aid Society also assists adults and children who are victims of domestic violence in obtaining protective orders from the court, regardless of the victims' income. It does not accept criminal cases.

During 1997, Legal Aid Society assisted more than 2,500 clients with domestic relations cases and 3,000 victims of domestic violence.

Utah State Bar Utah Dispute Resolutions Legal Aid Society of Salt Lake Utah Legal Services, Inc.

The Administrative Office of the Courts The Marriage of Mediation and Divorce

Date: Friday, April 10, 1998

Time: 8:00 a.m. to 12:00 p.m.
(Registration begins at 7:45 a.m.)

Place: Utah Law & Justice Center,
645 S. 200 E., SLC, UT

Fee: FREE for attorneys who
volunteer to assist medi-
ating parties. \$65.00 for all
other attorneys.

CLE Credit: Four hours

To register please RSVP by Friday, April 3,
1998 to Amy Jacobs at 297-7033

Bar Directory On-Line

We receive a lot of requests from Bar members about directories of Utah attorneys. There are a number of hard-copy versions available from local vendors which you may want to pursue. However, the Bar has taken steps to make it easy for you to find your fellow Utah lawyers.

Check out our web site at <http://www.utahbar.org/directories.html>. This is an on-line version of the Bar directory. It is updated least weekly, so you can be sure that it contains the most recent information. As well, at this site there are directories of Bar Commissioners, Bar Staff, Sections, Committees and local bar associations for your convenience.

Check it out. If you have questions about the site or the directory, please contact Toby Brown at tbrown@utahbar.org.

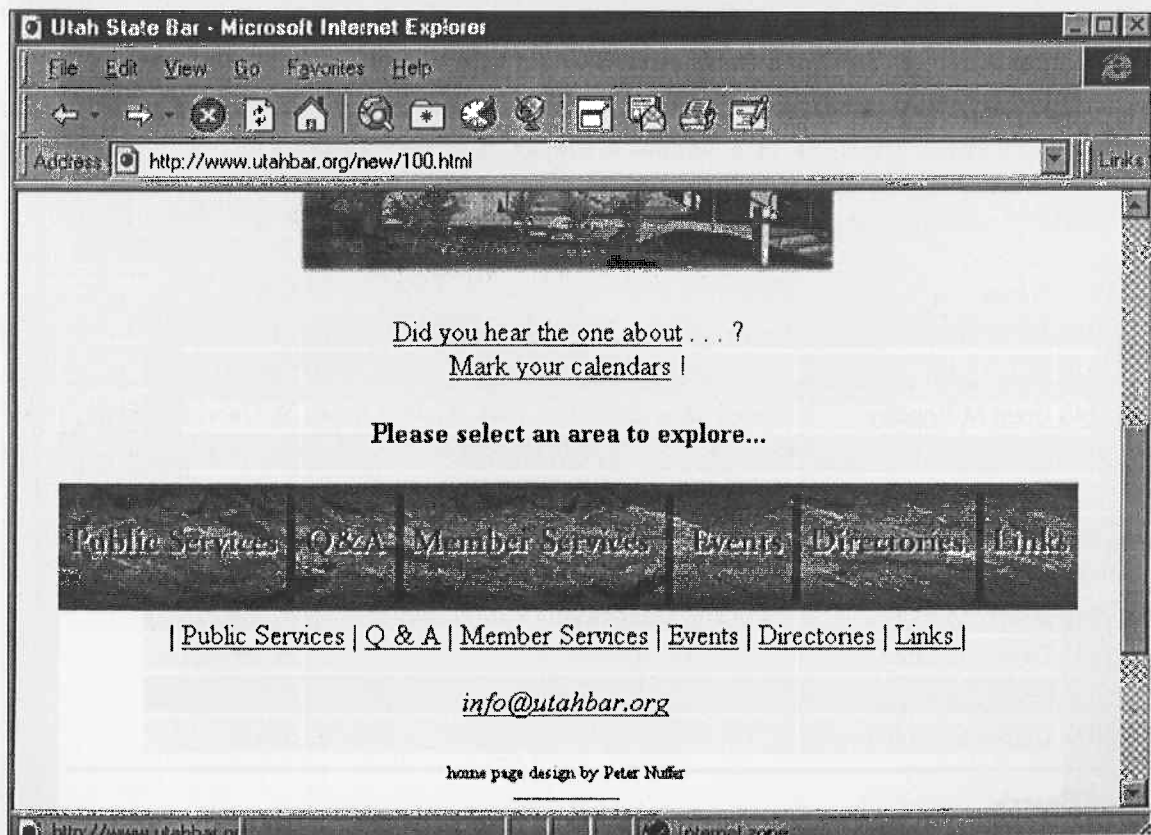
Thanks!

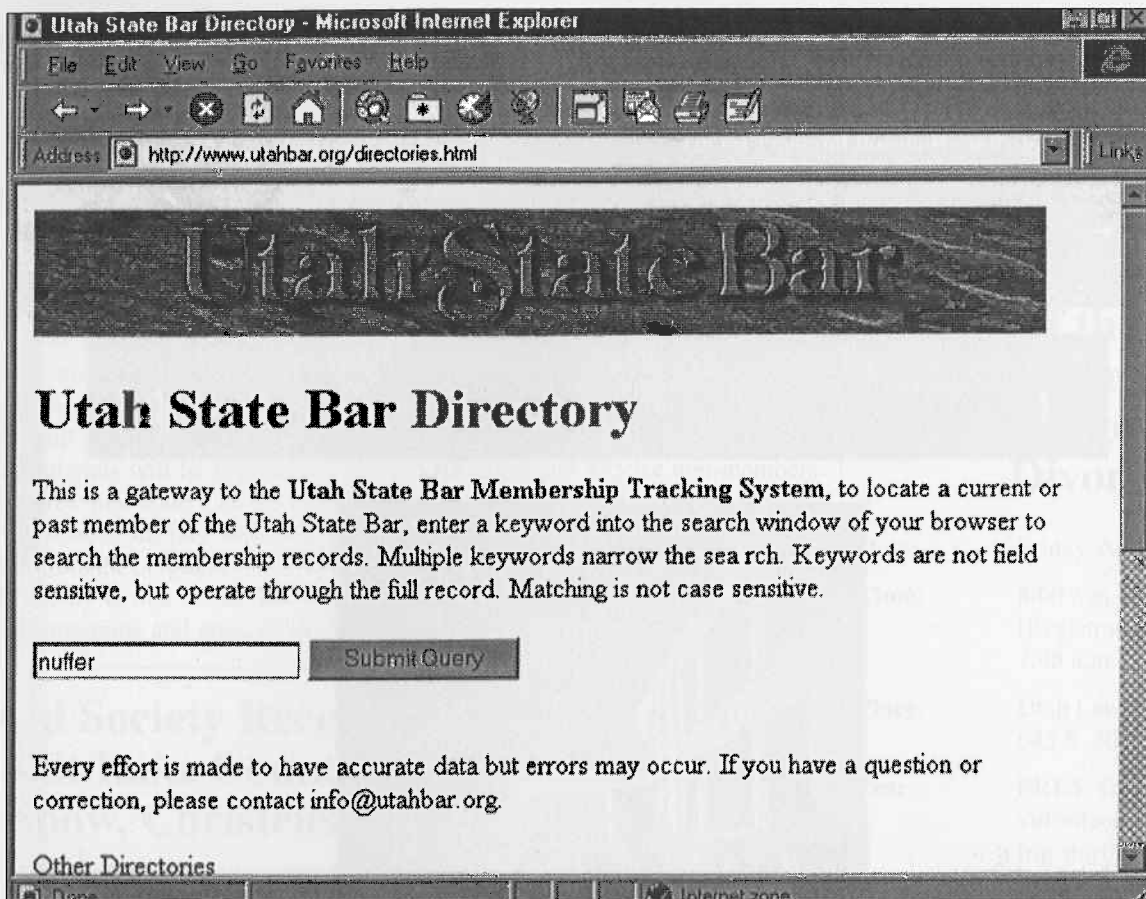
How to use the Utah State Bar Member Directory

The Utah State Bar on line directory is a great resource for lawyers, legal assistants and legal secretaries. It is located from the Bar Web Page (found at <http://www.utahbar.org>)

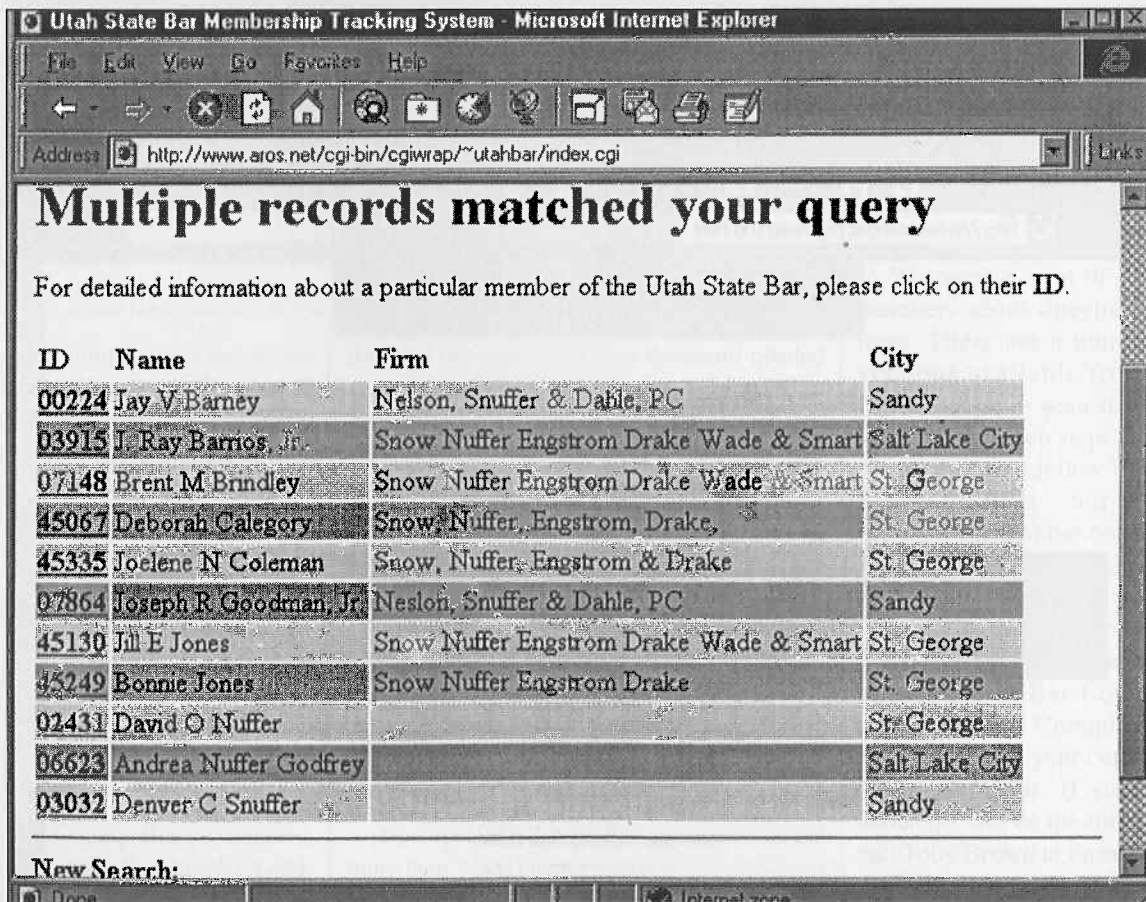


Click on "directories" to go to the directory.





Enter the name of the lawyer, or legal assistant, or a firm or city name. The search will proceed when you click the SUBMIT button.



In this case, the names of attorneys whose records contain “nuffer” came up. This includes David Nuffer, Denver Snuffer, members of their firms and other luminaries. Click on the name you really want to get more information.

The screenshot shows a web browser window titled "Utah State Bar Membership Tracking System - Microsoft Internet Explorer". The address bar contains the URL "http://cgi.aros.net/cgi-bin/cgiwrap/~utahbar/index.cgi?idsearch=02431". The main content area displays the title "Utah State Bar Membership Tracking System" in a large, bold font. Below this, the contact information for David O Nuffer is listed: "David O Nuffer", "90 East 200 North", "P.O. Box 400", "St. George, UT, 84771-0400". Further down, the contact details are provided: "Voice Telephone: (801)674-0400", "FAX: (801)628-1610", and "Email: david.nuffer@snedws.com". A section titled "Membership Information" contains a table with two rows: "Bar ID" with the value "02431" and "Status" with the value "Active". The browser's status bar at the bottom shows "Done" and "Internet zone".

Membership Information	
Bar ID	02431
Status	Active

This screen is the key. You can copy and paste the address information into your word processing document or – Click on the “hot” e-mail address and your e-mailer will create a message addressed to the listed person.

The screenshot shows an email composition window titled "Untitled - Message". The window has a menu bar with "File", "Edit", "View", "Insert", "Format", "Tools", "Compose", and "Help". Below the menu bar is a toolbar with various icons for sending, saving, and formatting. The "Message" tab is selected, and the "Options" sub-tab is active. The "To:" field is filled with the email address "david.nuffer@snedws.com". The "Cc:" field is empty. The "Subject:" field is also empty. The main body of the email is a large, empty text area.

Ethics Advisory Opinion Committee

OPINION NO. 97-12

Issue: Utah Code Ann. §62A-4a-403 obligates any person who suspects a child has been subjected to abuse to report such conduct to the nearest law enforcement officer. Is it a violation of the Rules of Professional Conduct if the attorney does not report a client's conduct that falls under this provision when the attorney learns of such conduct from the client and the client refuses to consent to such disclosure?

Opinion: It is not a violation of the Rules of Professional Conduct if the attorney does not disclose such information, but the attorney may, to the extent the attorney believes necessary, disclose attorney-client information as provided in Rule 1.6(b).

OPINION NO. 98-01

Issue: May an elected county attorney or other prosecutor who is allowed to engage in private practice continue to act as attorney in a civil matter in which the opposing party in the civil matter commits

a crime or otherwise comes under suspicion as a potential criminal defendant in that county? Is it enough that the prosecutor refers any criminal matter involving the opposing litigant to another prosecutor, or must the attorney withdraw from both matters?

Opinion: As a general rule, a Utah prosecuting attorney acting as a private practitioner should avoid engaging in a civil action that involves parties and facts that have been or become the subject of criminal investigation within the prosecutor's jurisdiction. Provided the attorney has not become personally substantially involved in and has no meaningful control over any investigation of the criminal matter, the attorney already involved in civil litigation need not withdraw from the civil matter and can avoid inherent conflicts by referring the criminal matter to an appropriate conflicts attorney.

Basic Mediator Training

Sponsored by the Court Annexed ADR Program & Utah Dispute Resolution

Location: Law & Justice Center
645 So. 200 East, SLC
Dates: May 6 - 10
8:00 a.m. - 5:00 p.m.
Fees: \$500
Focus: This 32 hours course provides basic mediator training and satisfies the requirement for participation on the Court Annexed ADR roster.

Book Review/ CLE Session

The University of Utah College of Law is presenting a panel review of the award-winning book *A Civil Action* by Jonathan Harr. The panel members are James B. Lee, Bob Peterson and Professor Susan Poulter. Utah Supreme Court Justice Michael Zimmerman will be the moderator. The book review will take place Thursday, March 19, at 6:30 p.m. in the law school's Sutherland Moot Courtroom. Light refreshments will follow. Lawyers attending the presentation may receive 2 hours of CLE credit, including 1 hour of ethics. There is no charge for the event.

Ethics Opinions Available

The Ethics Advisory Opinion Committee of the Utah State Bar has compiled a compendium of Utah ethics opinions that are now available to members of the Bar for the cost of \$10.00. Sixty-five opinions were approved by the Board of Bar Commissioners between January 1, 1988 and January 23, 1998. For an additional \$5.00 (\$15.00 total) members will be placed on a subscription list to receive new opinions as they become available during 1998.

ETHICS OPINIONS ORDER FORM

Quantity

Amount Remitted

Utah State Bar
Ethics Opinions

(\$10.00 each set)

Ethics Opinions/
Subscription list

(\$15.00)

Please make all checks payable to the Utah State Bar
Mail to: Utah State Bar Ethics Opinions, ATTN: Maud Thurman
645 South 200 East #310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.

*Thank
You!*

I would like to thank all the members of the Bar Examiners Committee, Bar Examiners Review Committee and Character and Fitness Committee for a successful February Bar Examination that was given February 24th and 25th. Your voluntary time for the bar examination was very much appreciated.

Thank you again,
Darla C. Murphy,
Admissions Administrator

1998 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 1998 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Monica Jergensen, Convention Coordinator, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than **Wednesday, April 1, 1998**. The award categories include:

1. Judge of the Year. This award is presented to the judge whose career exemplifies the highest standards of judicial conduct for integrity and independence; who is knowledgeable of the law and faithful to it; who is unswayed by partisan interests, public clamor or fear of criticism; who is patient, dignified and courteous to all who appear before the court; and who endeavors to improve the administration of justice and public understanding of, and respect for, the role of law in our society.

2. Distinguished Lawyer of the Year. This award is presented to a Utah Bar member who, over a long and distinguished legal career, has by his or her ethical and personal conduct, commitment and activi-

ties, exemplified for their fellow attorneys the epitome of professionalism, and/or who has also rendered extraordinary contributions to the programs and activities of the Utah State Bar in the prior year.

3. Distinguished Young Lawyer of the Year. Determined by the Young Lawyer's Division.

4. Distinguished Section/Committee. This award is presented to a section and/or committee of the Utah State Bar that has made outstanding contributions of time and talents to Bar activities as well as provided outstanding services, programs and/or activities for Bar members and the public at large during the past year.

5. Distinguished Non-Lawyer for Service to the Profession. This award is presented to a non-lawyer who, over a period of time, has served or assisted the legal profession or the Utah State Bar in a significant way.

6. Distinguished Pro Bono Lawyer. This award is presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance to people who could not afford the assistance of an attorney. This award is intended to reflect such contribution of an attorney during the past year as well as contributions over an attorney's career.

NOTICE

Utah has enacted a revised *Pro Hac Vice* rule effective November 1, 1997 which imposes new requirements on Utah attorneys who associate with non-resident lawyers who wish to appear in Utah courts. There has been some confusion about the new procedures. The rule (Rule 11-302 Utah Code of Judicial Administration) requires that an application and \$75.00 fee for each non-resident attorney seeking admission must be submitted to the appropriate court. In addition, a motion complying with Rules 11-302 requirements must be filed with the court, affidavits are no longer required. Utah counsel must provide copies of each application and the motion to General Counsel of the Utah State Bar.

Copies of the rule, application and instruction sheet can be obtained from any court or the Utah State Bar. If you have questions, please call Lynette Limb at the Bar at 531-9077.

MEMBERSHIP CORNER

CHANGE OF ADDRESS FORM

Please change my name, address, and/or telephone and fax number on the membership records:

Name (please print) _____ Bar No. _____

Firm _____

Address _____

City/State/Zip _____

Phone _____ Fax _____ E-mail _____

All changes of address must be made in writing and NAME changes must be verified by a legal document. Please return to: UTAH STATE BAR, 645 South 200 East Salt Lake City, Utah 84111-3834; Attention: Arnold Birrell. Fax Number (801) 531-0660.

Utah's Appellate Courts to Co-Locate

The first courts to undertake the move to the Scott M. Matheson Courthouse will be the Utah Supreme Court and the Utah Courts of Appeals. Both courts will be located on the fifth floor of the building. Current moving plans call for the Court of Appeals to move between March 7 through March 10 and the Supreme Court from March 10 through March 12.

While the decision-making functions of the appellate courts will remain entirely separate, basic clerical tasks such as docketing, records and transcript management, and briefing scheduling, will be accomplished by a combined appellate clerks' office. The combined office will consist of Matty Branch, appellate court administrator, Pat Bartholomew, clerk of the Supreme Court, Julia D'Alesandro, clerk of the Court of Appeals, and eight deputy court clerks. After March 10, pleadings and papers to be filed either in a Supreme Court case or a Court of Appeals case may be filed at a single appellate counter on the fifth floor. The staff of the co-located clerks' office will have the expertise to assist patrons of either court.

During the move, both courts' computer

systems will be "down" and access to court files and records on appeal will be severely limited. Unfortunately, disruption and inconvenience are unavoidable components of such a move. The courts request the cooperation and patience of all as the courts adjust to their new home.

Please note the following address and telephone changes, effective March 10, 1998:

UTAH SUPREME COURT

450 South State • P.O. Box 140210
Salt Lake City, UT 84114-0210

UTAH COURT OF APPEALS

450 South State • P.O. Box 140230
Salt Lake City, UT 84114-0230

APPELLATE CLERKS' OFFICE:

801-578-3900 • Fax No 801-578-3999

By way of information, the State Law Library will be open for business at its present location in the Capitol until approximately June 5, 1998. From June 6 to July 2, the library will be closed to permit the sizeable collection to be boxed, moved and reshelved in the library's new location on the first floor of the Matheson Courthouse.

You Are Invited

Opening Ceremonies and Dedication of Scott M. Matheson Courthouse

*450 South State,
Salt Lake City
Friday, March 27, 1998
2:30 p.m.*

*Public Tours conducted
March 30, 31
April 1, 2, 3*

*Call Debbie Christiansen
at 578-3832 for
tour reservations*

UTAH LAWYERS CONCERNED ABOUT LAWYERS

Confidential* assistance for any Utah attorney whose professional performance may be impaired because of emotional distress, mental illness, substance abuse or other problems.

Referrals and Peer Support

(801)297-7029

**LAWYERS HELPING LAWYERS COMMITTEE
UTAH STATE BAR**

*** See Rule 8.3(d), Utah Code of Professional Conduct**

Federal Judicial Conference of the Tenth Circuit

Keystone Resort, Colorado

June 25-27, 1998

Meeting for the last time in this century, the Judicial Conference of the Tenth Circuit will look into the millennium for a glimpse of what the future of the law and allied fields will have in store for us. The program will be keynoted by Chief Judge Harry T. Edwards of the D.C. Circuit bringing us: "A New Vision for the Legal Profession."

Under the leadership of Bankruptcy Judge Sidney Brooks of Colorado, a panel composed of Hon. James M. Farley of the Supreme Court of Ontario, Hon. Louise DeCarl Adler of the U.S. Bankruptcy Court of the Southern District of California, and John A. Barrett, Esq. of Fullbright & Jaworski, will discuss International Commercial Law of the future. We will hear about bioethics and the law from Professor George Smith of Catholic U. Law School. An extensive program on Automation and

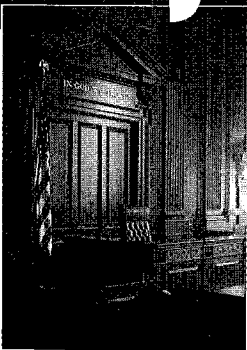
its Affect on the Practice and Substance of the Law will be presented by a panel headed by Dr. Gordon Bermant, formerly of the Federal Judicial Center, and Dean Harry Perritt of Chicago-Kent School of Law. Also speaking on current and future applications of automation in federal courts will be Gary Bockweg of the Administrative Office of the Courts and Hon. Edward Nottingham, Chair of the Committee on Automation and Technology. Professor Joyce Sterling of the University of Denver College of Law and Hon. Wiley Daniel of the District of Colorado will head an animated panel discussion of the Constitution and Human Liberty, and Professors Alan Chinn of D.U. Law and Erwin Chemerinsky of USC Law, will present reviews of Tenth Circuit and U.S. Supreme Court developments. Hon. David and Gayle Ebel will also present another of their outstanding programs especially for the

young people at the conference.

Other distinguished guest speakers will be Justice Stephen G. Breyer, syndicated columnist Anthony Lewis, and the Executive Chef of the Keystone Resort. The usual social events, including a grand opening reception, a sing-a-long, and luncheons will be capped by a dinner cabaret evening starring Comedian/Musician Pete Barbutti and dancing to the music of the Dez Rubano Sextet.

Please mark your calendars for Thursday through Saturday, June 25-27 and join us at Keystone, Colorado. You must be a member of the Tenth Circuit Judicial Conference to attend. To join, write or FAX your request to Bryon White, United States Courthouse, 1823 Stout Street, Denver, Colorado 80257, Telephone (303) 844-2067, Fax (303) 844-2079/844-2088. We will furnish an application promptly.

OBJECTION!



If you're not insured with the Attorneys' Advantage Professional Liability Insurance Program... you should object to your current insurer on the following grounds:

- You may be paying too much for your liability coverage.
- You may not have the broad coverage you really need.

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Fax: 1-801-488-2559

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Attorneys' Advantage

Kruse, Landa & Maycock, L.L.C.

congratulates

Ellen Maycock

the 82nd woman lawyer in Utah and a founder,

senior member and principal owner

of the firm since 1978,

and our other women colleagues,

Jody L. Williams

and

Pamela S. Nighswonger

KRUSE, LANDA & MAYCOCK, L.L.C.

50 WEST BROADWAY (300 SOUTH)
EIGHTH FLOOR, BANK ONE TOWER
SALT LAKE CITY, UTAH 84101-2034
TELEPHONE: (801) 531-7090

MAILING ADDRESS:

Post Office Box 45561
Salt Lake City, Utah 84145-0561

1998 Mid-Year Convention Sponsors

The Mid-Year Convention Committee extends its gratitude to the following sponsors for their contributions in making this a successful and enjoyable Mid-Year Convention. Please show your appreciation for their donation by supporting these firms and businesses:

BLACKBURN & STOLL	NIELSEN & SENIOR
CHRISTENSEN & JENSEN	OLSON & HOGGAN
COHNE, RAPPAPORT & SEGAL	PARR WADDOUPS BROWN GEE & LOVELESS
DAVIS COUNTY BAR ASSOCIATION	PARSONS BEHLE & LATIMER
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FARR, KAUFMAN, SULLIVAN, GORMAN, JENSEN, MEDSKER, NICHOLS & PERKINS	RICHARDS, BRANDT, MILLER & NELSON
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IVIE & YOUNG	SALT LAKE COUNTY BAR ASSOCIATION
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McKAY, BURTON & THURMAN	VANCOTT, BAGLEY, CORNWALL & McCARTHY
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MOXLEY, JONES & CAMPBELL	WILLIAMS & HUNT
	WINDER & HASLAM

1998 Mid-Year Convention Exhibitors

AON RISK SERVICES	NEXLINK AFFINITY
CONTINENTAL INSURANCE AGENCY	R.R. DONNELLEY FINANCIAL
LEXIS-NEXIS	ATTORNEY'S TITLE GUARANTY FUND, INC.
LUMIX COMMUNICATIONS (FORMERLY DATAFLOW SERVICES)	UTAH BAR FOUNDATION
	WEST GROUP

Scott M. Matheson Award

In 1991, the Law-Related Education and Law Day Committee of the Utah State Bar presented the first annual Scott M. Matheson Award. Currently, the committee is accepting applications for the 1998 Award.

PURPOSE: To recognize a lawyer and a law firm who have made an outstanding contribution to law-related education for youth in the State of Utah.

CRITERIA: Applications will be accepted on behalf of individuals or law firms who have:

1. Made significant contributions to law-related education for youth in the State of Utah.
2. Voluntarily given their time and

resources in support of law-related education, such as serving on committees, reviewing or participating in the development of materials and programs, or participating in law-related education programs including the Mentor Program, Mock Trial Program, Conflict Management Program, Judge for a Day, or other court and classroom programs.

3. Participated in activities which encourage effective law-related education programs in Utah schools and communities, such programs increasing communication and understanding among students, educators, and those involved professionally in the legal system.

APPLICATION PROCESS: Application forms may be obtained from and submitted to:

Scott M. Matheson Award
Law-Related Education and
Law Day Committee
Utah Law and Justice Center
645 South 200 East, Suite 101
Salt Lake City, Utah 84111
Phone: 322-1802

All materials submitted should be in a form which will allow for their easy reproduction for dissemination to members of the selection committee. Applications must be postmarked no later than March 31, 1998.

PAST HONOREES INCLUDE:

	Attorney	Law Firm
1991	Gregory G. Skordas	Van Cott, Bagley, Cornwall and McCarthy
1992	Barry Gomberg	Fabian and Clendenin
1993	Kevin F. Smith	Ray, Quinney and Nebeker
1994	Kim M. Luhn	LeBoeuf, Lamb, Greene and MacRae

	Attorney	Law Firm
1995	Gordon K. Jensen	Utah Attorney General's Office
1996	Kevin P. Sullivan	Richards, Caine and Allen
1997	Steven L. Garside	Utah County Public Defender Association

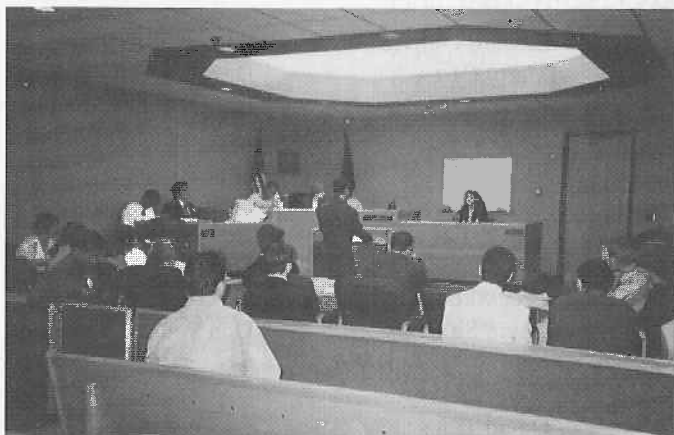
Continuing the Tradition: Legal Education for Our Youth

In the spring of 1997, 195 judges, attorneys, and community representatives invested a total of 400 hours in judging mock trials throughout the state of Utah. More than 1,000 junior and senior high school students from the ages of 12 through 18 played the parts of witnesses, attorneys, and bailiffs in 103 three-hour trials. They tried the case of *Terri Banner v. Johnny*

Hayes, and the White Aryan Separatist Party, a wrongful death action to determine whether the murder of a black man resulted from a skinhead's reading of racist literature put out by a national organization.

Join your esteemed colleagues in judging this year's school shooting case. A sign-up sheet is found at the back of this issue of the *Journal* (CLE credit has been applied for).

The Utah Mock Trial Program, conducted by the Utah Law-Related Education, and sponsored by the Utah Bar Foundation and the Utah State Bar, thanks these persons for their commitment to teach youth their rights and responsibilities under the rule of law:



1997 Mock Trial Judges

Tammy Abernathy	William Cole	Ed Havas	Margaret Nelson	Kent Snider
Steven Alder	Steve Combe	Douglas Haymore	Matt Nelson	Carolyn Stewart
Bernard Allen	Catherine Conklin	Alicia Head	Pam Nelson	Craig Story
John Allen	Glen Cook	Hon. James Heffernan	JoAnn Nielson	Robert Stott
Kari Allred	Dr. Forest Crawford	Debra Hess	Ronald Nichols	Evan Strassberg
Stephanie Ames	David Dallenbach	Gary Heward	Mike Norman	Mark Stringer
Tawni Anderson	Christine Decker	Michelle Heward	John O'Connell	Flora Stagg
Katherine Astin	Ojik Degeus	Rein Heymering	John Ogilvie	Kathy Steinmetz
Bruce Baird	Gerry D'Elia	Ken Higgins	Michael Olmstead	Kevin Sullivan
Junior Baker	Sue Denhardt	Hon. Robert Hilder	Herm Olsen	Nate Taggart
John Baldwin	Dale Dorius	David Hodgson	Red Olsen	Patrick Tan
Carrie Bauer	John Dow	Karen Hom	Pat Parker	Earl Tanner
Barbara Bawden	Paul Durham	Hon. Richard Howe	Ken Parkinson	David Thayer
Beau Behrens	Mark Dykes	Heath Isaacs	Dale Pearson	Laura Thompson
Jeff Bell	John Fay	Gordon Jensen	Ed Peterson	Margaret Thornton
Jenny Bennett	Suzanne Gustin-Fergus	Scott Jensen	Sue Petty	Robert Thorup
Judy Bezoksi	Dave Finlayson	Stephen Jewell	Nano Podolsky	Kirk Torgensen
Stephanie Bird	Scott Fisher	Donna Johnson	Robert Reynolds	Tonia Torrance
Timothy Blackburn	Kimberly Fowkes	Howard P. Johnson	Randall Richards	Adam Trupp
Rich Blake	Honorable Joseph Fratto	Paul Johnson	Michael Richter	Phil Viti
Gary Blatter	Christine Frodsham	Brian Jones	Kim Rilling	Ed Wall
Maria Booth	Robert Funk	Mike Junk	Doug Ritchie	Stu Walls
Mike Bouwhuis	Carlos Garcia	Michael Katz	Sue Robinson	Kim Walpole
John W. Bradley	Andrea Garland	Mike Keller	Jennifer Ross	Virginia Ward
Lynn Bradak	Dan Garrison	Tom King	Joseph Rust	Terryl Warner
Scott Broadhead	David Geary	Bill Kucera	Christine Sagendorf	David Weiskoph
Mara Brown	Ted Godfrey	Linda Kucera	Dean Saunders	Hon. Judith Whitmer (ret.)
Toby Brown	Mary Gordon	Deanna Marie Lasker	Gayanne Schmid	John Williams
Scott Beuhler	Diedre Gorman	Shirley Leali	Stephanie Schmidt	Denise Williamson
Jon Bunderson	Linda Gowans	Chelom Leavitt	Mary Shwab	Den Winward
John Bybee	Hon. Pamela Greenwood	Virginia Lee	JoAnn Seghini	Ray Wong
John Caine	Douglas Griffith	Charles Maak	Brook Session	Kaye Workman
Brian Cannell	Marlu Gurr	Ramona Mann	Alan Sevison	Georgia Yardley-Barker
Kelly Cardon	John Guynn	Windy Manning	Chris Shaw	Lousie York
Ralph Chamness	Richard Hackwell	Kira McFarlane	Ann Shosted	Kathleen Zeitlin
Scott Chapman	Stephen Hadfield	Eric Middlestadt	Sharon Sipes	Carolyn Zeuthen
Carlie Christensen	Scott Hadley	Tom Mitchell	Gregory Skordas	
Jini Christensen	Craige Harrison	Thomas Montano	Russell Skousen	
Terry Christensen	Susie Hauser	John Musselman	Kevan Smith	
Tom Clawson	David Bert Havas	Lori Nelson	Russell Smith	

1997 Mock Attorney Coaches

Diane Banks	Marty Custen	Richard Henriksen, Jr.	Edward Ogilvie	Bentley Tolk
Hon. William Barrett	Mark DeCaria	Rein Heymering	Marty Olsen	Dave Tuckett
Joseph Bean	Loni DeLand	Monet Hurtado	Karen Patterson	Hon. Stephen Van Dyke
Matt Blackburn	Susan Black Dunn	Miles Jensen	Keith Pope	Ken Wallentine
Tom Blonquist	Laura Dupaix	Dennis Judd	Ruth Ann Renlund	Paul Warner
Craig Bott	Doug Durbano	Trisha Judge-Stone	Tom Scribner	David Weiskoph
Mike Bouwhuis	Bruce Evans	Tom Klc	Tom Seiler	Delbert Welker
Richard Burbidge	Doug Fadel	Hon. Margaret Lindsay	Brian Sidwell	Hon. Brent West
Jeff Burton	Nathan Fisher	Kim Luhn	Greg Skordas	Scott Wyatt
Hon. Kevin Christensen	Steve Garside	John Lund	Devin Sullivan	Don Young
Mike Christensen	Barry Gomberg	Julie Lund	Marsha Thomas	
Dave Church	Paul Gotay	Ruth Lybbert	Tony Thurber	
Catherine Conklin	Chris Greenwood	Leonard McGee	David Tibbs	

1998 Mock Trial Schedule

Name: _____ Title: _____

Firm or Place of Employment: _____

Address: _____ Zip: _____

Phone: _____ Fax: _____ I have judged before. Yes _____ No _____ I will judge _____ (#) trial(s).

Please indicate the specific date(s) and location(s) that you **will commit** to judge mock trial(s) during the months of March and April. The dates and locations are *fixed*; you *will* be a judge on the date(s) and time(s) and location(s) you indicate, unless several people sign up to judge the same slot. If that occurs, we will call you to advise you of a change. You will receive confirmation by mail as to the time(s) and place(s) for your trial(s) when we send you a copy of the 1998 Mock Trial Handbook. Please remember — **all trials run approximately 2 1/2 to 3 hours and you will need to be at the trial 15 minutes early.** We will call one or two days before your trial(s) to remind you of your commitment.

Please be aware that *Saturday session* will be held on March 21st and March 28th. Multiple trials will be conducted. *Please give these dates special consideration.*

Specific addresses for all courtroom will be mailed with the confirmation letter.

Date	Time	Place	Preside	Panel	Comm. Rep.
Saturday, March 21	9:00–12:00	3rd District	()	()	()
	9:00–12:00	3rd District	()	()	()
	9:30–12:30	3rd District	()	()	()
	9:30–12:30	3rd District	()	()	()
	10:00–1:00	3rd District	()	()	()
	10:00–1:00	3rd District	()	()	()
	10:30–1:30	3rd District	()	()	()
	10:30–1:30	3rd District	()	()	()
	12:30–3:30	3rd District	()	()	()
	12:30–3:30	3rd District	()	()	()
	1:00–4:00	3rd District	()	()	()
	1:00–4:00	3rd District	()	()	()
	1:30–4:30	3rd District	()	()	()
	1:30–4:30	3rd District	()	()	()
	2:00–5:00	3rd District	()	()	()
	2:00–5:00	3rd District	()	()	()
Monday, March 23	9:00–12:00	Orem	()	()	()
Wednesday, March 25	1:30–4:30	Roy	()	()	()
Thursday, March 26	1:00–4:00	Orem	()	()	()
	1:30–4:30	Roy	()	()	()
Friday, March 27	8:30–11:30	Roy	()	()	()
	1:00–4:00	Castle Dale	()	()	()
	1:30–4:30	Roy	()	()	()
Saturday, March 28	1:30–4:30	Spanish Fork	()	()	()
	9:00–12:00	3rd District	()	()	()
	9:00–12:00	3rd District	()	()	()
	9:30–12:30	3rd District	()	()	()
	9:30–12:30	3rd District	()	()	()
	10:00–1:00	3rd District	()	()	()
	10:00–1:00	3rd District	()	()	()
	10:30–1:30	3rd District	()	()	()
	10:30–1:30	3rd District	()	()	()
	12:30–3:30	3rd District	()	()	()
	12:30–3:30	3rd District	()	()	()
	1:00–4:00	3rd District	()	()	()
	1:00–4:00	3rd District	()	()	()
	1:30–4:30	3rd District	()	()	()
	1:30–4:30	3rd District	()	()	()
	2:00–5:00	3rd District	()	()	()
Monday, March 30	2:00–5:00	3rd District	()	()	()
	1:00–4:00	Orem	()	()	()
Tuesday, March 31	1:00–4:00	Brigham City	()	()	()
	1:00–4:00	Orem	()	()	()
Wednesday, April 1	8:30–11:30	Roy	()	()	()
	9:00–12:00	Public Utilities #451	()	()	()
	1:00–4:00	Orem	()	()	()
	1:00–4:00	Public Utilities #451	()	()	()
	1:30–4:30	Roy	()	()	()

Date	Time	Place	Preside	Panel	Comm. Rep.
Thursday, April 2	8:30-11:30	Roy	()	()	()
	9:00-12:00	Tooele	()	()	()
	1:00-4:00	Orem	()	()	()
	1:00-4:00	Tooele	()	()	()
	1:30-4:30	Roy	()	()	()
Friday, April 3	8:30-11:30	Roy	()	()	()
	9:00-12:00	Ogden Justice Court	()	()	()
	1:00-4:00	Manti	()	()	()
	1:00-4:00	Tooele	()	()	()
	1:30-4:30	Roy	()	()	()
Monday, April 6	1:30-4:30	Ogden Justice Court	()	()	()
	9:00-12:00	Public Utilities #451	()	()	()
	9:00-12:00	Brigham City	()	()	()
	1:00-4:00	Orem	()	()	()
	1:00-4:00	Public Utilities #451	()	()	()
Tuesday, April 7	1:30-4:30	SLC (TBA)	()	()	()
	8:30-11:30	Public Utilities #426	()	()	()
	9:00-12:00	Public Utilities #451	()	()	()
	12:30-3:30	Public Utilities #426	()	()	()
	1:00-4:00	Logan	()	()	()
Wednesday, April 8	1:00-4:00	Public Utilities #451	()	()	()
	1:30-4:30	SLC (TBA)	()	()	()
	1:30-4:30	Spanish Fork	()	()	()
	8:30-11:30	Roy	()	()	()
	1:00-4:00	Public Utilities #451	()	()	()
Thursday, April 9	1:00-4:00	Orem	()	()	()
	1:30-4:30	SLC (TBA)	()	()	()
	1:30-4:30	Roy	()	()	()
	5:30-8:30	Logan	()	()	()
	8:30-11:30	Roy	()	()	()
Monday, April 13	1:00-4:00	Tooele	()	()	()
	1:30-4:30	Roy	()	()	()
	1:00-4:00	Orem	()	()	()
Tuesday, April 14	9:00-12:00	Orem	()	()	()
	1:00-4:00	Ogden Justice Court	()	()	()
	1:00-4:00	Logan	()	()	()
Wednesday, April 15	1:00-4:00	Orem	()	()	()
	8:30-11:30	Roy	()	()	()
	12:30-3:30	Coalville	()	()	()
	1:00-4:00	Coalville	()	()	()
	1:00-4:00	Roosevelt	()	()	()
	1:00-4:00	Public Utilities #451	()	()	()
	1:30-4:30	Roy	()	()	()
Semi-Final Rounds (If you will have judged a previous mock trial)					
Monday, April 20	9:00-12:00	Public Utilities #451	()	()	()
	1:00-4:00	Public Utilities #451	()	()	()
	1:00-4:00	Orem	()	()	()
	1:00-4:00	Brigham City	()	()	()
Tuesday, April 21	9:00-12:00	Orem	()	()	()
	9:00-12:00	Public Utilities #451	()	()	()
	1:00-4:00	Public Utilities #451	()	()	()
	1:00-4:00	Orem	()	()	()
Wednesday, April 22	1:00-4:00	Brigham City	()	()	()
	8:30-11:30	Roy	()	()	()
	9:00-12:00	Public Utilities #451	()	()	()
	1:00-4:00	Public Utilities #451	()	()	()
Thursday, April 23	1:30-4:30	Roy	()	()	()
	8:30-11:30	Roy	()	()	()
	9:00-12:00	Public Utilities #451	()	()	()
	1:00-4:00	Public Utilities #451	()	()	()
	1:00-4:00	Orem	()	()	()
	1:00-4:00	Tooele	()	()	()
	1:30-4:30	Roy	()	()	()
Please mail this form to:					
Mock Trial Coordinator					
Utah Law-Related Education Project					
645 South 200 East, Suite 101					
Salt Lake City, Utah 84111					
or Fax to:					
(801) 323-9732					



Young Lawyer Profile John L. Baxter

By Heather J. Dunn

In his late 30's, John Baxter, Marine, blue-collar worker who had unloaded hogs from railroad cars and placed explosive charges for an oil exploration crew, was looking for a new career. After his wife Alexa's 1961 Volkswagen bug broke down and she took a job nearer home as an attorneys' receptionist, John looked at the attorneys and thought, "I can do that."

John was born and raised in Salt Lake City. He attended West High School, where he met his wife Alexa. They have been married for "twenty-three wonderful years," according to John. In 1972-73 John spent two years in the Marine Corps, including eight months in Saigon. He attended the University of Utah part-time until he complete a B.S. in psychology and then applied to the College of Law. Undaunted after being wait-listed twice at the University of Utah, he headed for Golden Gate Law School in San Francisco. He knew of its reputation for producing public interest lawyers and was considering an career as a public defender in criminal cases.

Awarded a Merit Tuition Scholarship, he became active in the litigation program, presiding over the law school chapter of

ALTA, and joining the National Association of Criminal Defense Lawyers. Before graduation he had participated in over 20 mock trials and in several national competitions. He was recognized as "Outstanding Student Litigator" by the International Academy of Trial Lawyers and received the American Jurisprudence Award in Trial Advocacy.

During law school, he interned with the San Francisco City Attorney's Office on their public contracts team, organizing discovery and preparing trial notebooks. He graduated from law school in 1994 at age 42, his fellow students voting him the Paul S. Jordan Award for outstanding contribution to the law school by a student. He is now licensed to practice in Utah and California.

John began his legal career as a contract attorney searching discovery documents for "smoking guns." In April 1997 he joined Laherty and Associates as a civil public defender to represent indigent parents whose children have been removed by Utah's Division of Child and Family Services, under the Juvenile Court Act of 1996, U.C.A. 78-3a-101 et. seq. Such removals are usually recommended because of substance abuse, abuse or parental neglect. Although courtroom proceedings are adversarial, the civil

defender, attorney general and guardian ad litem try to work as a team to resolve cases. John appears almost exclusively in Judge Andrew Valdez's courtroom, approximately 10-20 times per week. He has a paralegal but does not have a secretary and has 75-80 cases open at all times.

By the time John is appointed as counsel, a parent or parents may have admitted damaging facts to DCFS workers. (Miranda warnings are not required.) John states that when he receives the cases, he goes into "damage control mode." John may meet with a client for the first time fifteen minutes prior to a hearing to determine whether it was reasonable for the state to remove the child or children from the home. If the court finds that the removal was reasonable and should continue, the parents may have at most one year to complete a DCFS treatment plan and receive reunification services. John works with the parents during that period. The highly-structured plans often require that clients "turn their lives around" by entering substance abuse treatment, finding adequate housing, and engaging in full-time employment. Clients may also be ordered to attend classes in anger manage-



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ment and parenting. If they work full-time and depend on public transportation, they may find it difficult to meet all the requirements. Physical abuse cases which result in the parent's incarceration often make it impossible for a parent to complete the plan within the year and regain custody. "In these cases," John says, "it is hard to explain to parents the ramifications of their actions."

Some of his clients are able to complete most, but not all of the DCFS plan. John's adversaries then become the Attorney General's office, which represents DCFS in court, and the guardian ad litem, who is appointed to represent the best interests of the child. At this point, John may be arguing to the judge that the plan is unreasonable and doesn't meet the needs of the family. "These cases are harder to lawyer, and also more difficult to explain to the client," says John. The clients tell him what they have done to comply with the plan, and John tells them what they still must do before they can regain custody.

John finds that breaking the cycle of neglect, abuse and substance abuse requires

more than excellent trial skills. "I'm not just their attorney," he says of his clients. "I'm often their social worker and counselor." He investigates clients' homes personally and tries to help parents regain custody by "cajoling, hand-holding and counseling." But he insists that his clients have the hard job: "All I have to do is protect their rights through technical legal procedures."

In his time away from work, John serves on the board of Literacy Volunteers of America and volunteers every Sunday morning at the 6th South Viaduct homeless legal clinic. "I can't resolve everyone's legal questions on the spot," he says, "so I do a lot of referrals to other agencies. These individuals are grateful for any help I can give."

Many attorneys would find the constant exposure to abuse and neglect proceedings draining, but John finds he is able to have a positive effect on peoples' lives through his work. "I enjoy going to work each day," he says. "My reward comes when I've helped parents change their lives and get their children back."

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frittered away
with details . . .*

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—Ralph Waldo Emerson

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CASE SUMMARIES

By Glen A Cook

STANDARD OF REVIEW

Carrier v. Pro-Tech Restoration, 327 Utah Adv. Rep. 3 (1997).

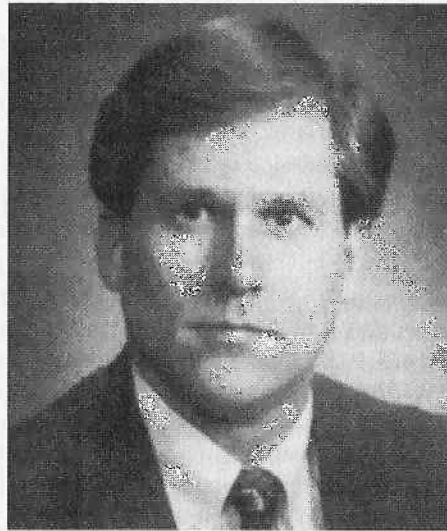
The Supreme Court has refused to overrule prior decisions and continues to hold that a trial court's erroneous allocation of peremptory challenges results in prejudice. The court also rejected state and federal constitutional objections to the denial of separate sets of peremptory challenges.

The facts involved an auto accident in Pleasant Grove with multiple defendants. The Supreme Court, upon appeal from the Court of Appeal, interpreted Utah Rule of Civil Procedure 47(e), governing peremptory challenges. This rule provides that "each party shall be entitled to three peremptory challenges, except as provided under Subdivisions (b) and (c) of this rule. Subdivision (c), the focus of the dispute, states in relevant part, "Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made. The Supreme Court noted that this is a mixed question of fact and law, inasmuch as the trial court must determine whether there is a "substantial controversy" between the parties. The Supreme Court further ruled that the trial court has limited discretion in its Rule 47(c) decisions.

BAR POWERS

Arnold v. Utah State Bar Association, 327 Utah Adv. Rep. 33 (1997).

In April, 1997, the Board of Bar Commissioners approved a contribution of up to \$250,000.00 from the general bar fund for improvements to the new Scott M. Matheson Courthouse in Salt Lake City. Bar members were allowed to opt out of their pro rata share of the contribution. The contribution would then be reduced by the collective pro rata shares. The petitioner challenged the authority of the Board to approve the contribution and the adequacy of the procedures that followed. The Supreme Court, upon stipulation, entered an order restraining any disbursement of the funds until further order. The Court reiterated prior holdings that it exercised its oversight of the Bar through the Rules for Integration and Management of the



Utah State Bar. Those rules delegate to the board "all powers necessary and proper to carry out the duties and responsibilities of the Bar and the purposes of these rules" and again, "all authority which is not specifically reserved to the court."

The Supreme Court found that the decision was "well within the authority of the Board . . ." The court further noted that the procedures for notice and opt out provided by the Bar were entirely adequate to inform Bar members of the Board's decision.

TRIAL COURT COMMENTS RULE 11 DUE PROCESS

Poulsen v. Freer, 327 Utah Adv. Rep. 48 (Utah Court of Appeals, 1997).

Lynn Poulsen, (Poulsen), filed an alienation of affection complaint against Karen Freer Poulsen, (Freer). Poulsen appeared pro se throughout the proceedings. Freer requested Rule 11 sanctions against Poulsen. The trial court declined to award the sanctions, but issued a warning to Poulsen that they could be applied in the future.

Over two years later, Poulsen filed an affidavit alleging bias against her by the trial judge. The trial judge entered an order certifying the affidavit to another judge. In doing so, the trial judge made substantial comments in his order. The case was sent back to the trial judge with the rejection of the motion for refusal.

After a three day bench trial, the trial judge ruled against Poulsen. He also told her he was considering Rule 11 sanctions

against her. In his final order, the judge concluded that Poulsen violated Rule 11.

Upon appeal, Poulsen claimed that the trial judge's comments in his order certifying her affidavit of prejudice improperly influenced the reviewing judge's decision. The Court of Appeals cited prior holdings in indicating that while it is permissible for the certifying judge to append relevant portions of the record to the order, the judge may not include advocacy or comment. The Court of Appeals set out the trial judge's comments, which they characterized as his version of the incidents described in Poulsen's affidavit. They then noted that these were exactly the type of advocacy or comment that the Utah Supreme Court had determined was inappropriate. However, even though the comments were not proper, they were not found to be prejudicial, because the affidavit of prejudice was insufficient on its face.

In regard to Rule 11 sanctions, the court held that before a court imposed the sanctions on a party, due process requires that the party receive adequate notice and an opportunity to respond. It was noted that this right to respond does not require and adversarial, evidentiary hearing. In most instances, due process is satisfied if the trial court gives the party against whom the sanctions are to be imposed an opportunity to file a brief or to otherwise respond. The sanctions imposed were reversed by the Court of Appeals in the matter remanded to the trial court to allow Poulsen an opportunity to be heard.

It was also noted that attorney fees were awarded without an affidavit of these being filed. Thus, the order ordering attorney fees was also reversed.

IMPROPER PROSECUTORIAL ARGUMENT

State v. Stephens, 327 Utah Adv. Rep. 51 (Utah Ct. Appeals, 1997).

Defendant was convicted of two counts of unlawful possession of a controlled substance. He appealed, arguing the trial court erred when it denied his motion to suppress, asserting the prosecutor made an improper, prejudicial remark in his closing argument. The court affirmed. In regard to

the comments of the prosecutor, the following statement to the jury was noted.

You may say, "Well, yeah we have got Mr. Stephens charged with a crime. There is no victim here with regard to those offenses.[" We have only taken roughly two hours to present the case to you today[.] [W]hy all of the big fuss and bother to occupy your time for a day? Well, you all know the impact that this type of offense has.

Defense counsel promptly objected to the prosecutor's comment about the "impact" of the offense and the trial court sustained the objection. The trial court then immediately cautioned the jury.

Unfortunately, the Court of Appeals declined to address the prosecutor's statement: "Without addressing whether the prosecutor's brief comment was improper, we conclude that defendant was not prejudiced by it."

While the Court of Appeals's opinion is instructive in demonstrating how prejudice may be avoided (prompt objection, cautionary instruction, the general instruction to ignore public opinion or public feeling, and the general instruction to disregard statements of counsel), it is disappointing that a firm rebuke was not given to prosecutors who choose to use this type of argument.

CORPORATION REQUIREMENT ADOPTED FOR PROBABLE CAUSE BASED ON THE ODOR OF MARIJUANA

State v. Maycock, 329 Utah Adv. Rep. 10 (Utah Ct. Appeals, 1997).

Defendant was pulled over for having no front license plate. The officer testified he smelled burnt marijuana when the defendant rolled down his window. The officer requested permission to search the truck. For once, a defendant refused. The officer proceeded to search, based on the smell of burnt marijuana. While no marijuana was found, a clip with a burn mark on the end, a film container with a ball point pen tube that had been cut to fit inside the film container, a small pipe containing the burnt residue, a metal tube, a razor blade with a folding handle, a small green plastic container, which contained methamphetamine, were found. An oral motion to suppress was denied. A conviction entered. The appeal followed.

The Utah Court of Appeals adopted the corroboration requirement for probable cause based on the odor of marijuana. This was an issue of first impression in Utah. The Utah Court of Appeals adopted the Tenth Circuit opinion in *United State v. Nielson*, 9 F.3d 1487 (10th Cir. 1993). The Court of Appeals therefore held that probable cause to support a search based solely on an offi-

cer's objective belief that he or she smelled marijuana will be upheld only when the search corroborates marijuana or its use. In the incident case, the various items of paraphernalia provided that corroboration.

TOLLING OF PROBATION

State v. Grate, 329 Utah Adv. Rep. 12 (Utah Ct. Appeals, 1997).

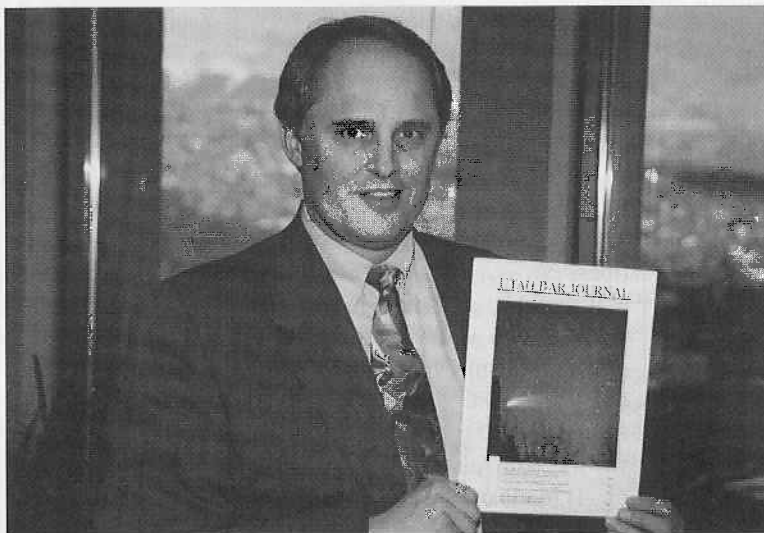
Pursuant to Utah Code Ann. Section 77-18-1(8)(a) (Supp. 1988), any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke the probation does not constitute service of time toward the total probation term.

In *State v. Grate*, the court interpreted the term "charge" as meaning service of notice on a probationer of the actual accusations and of the need to prepare a defense. The mere filing of a notice of violation with the court and a subsequent arrest do not satisfy the charging requirement. A probationer is not charged with a probation violation until he or she has received written notice both of the nature of the allegations against him or her and of the pendency of an enforcement action in the trial court which requires a response.

Utah Bar Journal Announces "1997 Cover of the Year"

Congratulations to Raeburn G. Kennard, pictured at right, whose outstanding photograph of the Hale-Bopp Comet prompted selection of the April cover of the *Utah Bar Journal* as the "1997 Cover of the Year."

For all you photography buffs, the photograph was taken on March 30 at about 8:00 p.m., after sunset, but before the sky was totally dark. The location was at "Pine Mountains," a mountain cabin area 11 miles east of Oakley, Utah, along the upper Weber River, elevation approximately 7,000 feet. Raeburn used Kodak Gold 400 print film, a Pentax ME Super camera, with 50mm lens, at f-stop 1.4, focus at infinity, exposure



time approximately 45 seconds. This one was his favorite among approximately six rolls of film used in photographing the comet between January and May, 1997.

Interest in the covers of the *Bar Journal*, featuring photographs taken by members of the Utah State Bar, continues to be strong. It is not uncommon to see past issues of the *Journal* displayed for their aesthetic qualities in law offices throughout the State.

Half of the photographs appearing on 1997 covers were submitted by first-time contributors. Since August 1988 when the *Journal* introduced its current cover design, 27 different members of the Utah Bar have participated as contributing photographers.

Next time you are in the Law and Justice Center, drop by the "Covers of the Year" display on the second floor.



Notice of Election U.B.F. Board of Trustees

NOTICE IS HEREBY GIVEN, in accordance with the bylaws of the Utah Bar Foundation, that an election of two trustees to the Board of Trustees of the Foundation will be finalized at the annual meeting of the foundation held in conjunction with the 1998 Annual Meeting of the Utah State Bar in Sun Valley, Idaho. The two trustee positions are currently held by Jane A. Marquardt and H. James Clegg. Term of the office is 3 years.

Nomination may be made by any member of the Foundation (every attorney licensed to practice law in the State of Utah is also a member of the Foundation) by submission of a written nominating petition identifying the nominee, who must

be an active attorney duly licensed to practice law in Utah, and signed by not less than 25 attorneys who are also duly licensed to practice law in Utah.

Petitions should be mailed to the Utah Bar Foundation, 645 S. 200 East, Salt Lake City, Utah 84111 so as to be received on or before **April 30, 1998**. Nominating petition forms can be obtained at the Foundation office or requested by telephone (297-7046). The election will be conducted by secret ballot which will be mailed to all active members of the Foundation on or before May 31, 1998. Winners of the election will be announced at the Bar's annual meeting in Sun Valley.

U.B.F. Community Service Scholarships

The Utah Bar Foundation will award two 1998 Community Service Scholarships in April – one to a student at the J. Reuben Clark Law School at Brigham Young University and one to a student at the University of Utah College of Law. The amount of each scholarship is \$3,000.

To qualify to receive one of these scholarships, the student must have participated in and made a significant contribution to the community by performing community service for organizations such as Legal Aid Society, Utah Legal Services, Travelers Aid Society, Guadalupe School, Salt Lake Detention Center, Odyssey House, Bennion Center, Utah Law-Related Education Project.

Applicants should send application letters and resumes to the Utah Bar Foundation, 645 S. 200 East, Salt Lake City, Utah 84111, describing the service performed, identifying the beneficiary or organization receiving the service and naming individuals who can be contacted concerning that service. Deadline: **March 31, 1998**.



One of Utah Bar Foundation's grant recipients, Utah Law-Related Education Project, shows Neil Harding with Mock Trial students at Grantsville High School.

1988 IOLTA Grant Application Process

The Utah Bar Foundation was organized in 1963 as a non-profit charitable corporation. All licensed members of the Utah State Bar are automatically members of the Foundation and can make direct contributions and/or participate in the Interest on Lawyers Trust Account Program (IOLTA) that generates funds for grants. A 7-member Board of Trustees administers these funds and awards grants annually to community agencies that support legal services

to the disadvantaged, improve the administration of justice, support law-related education and other law-related purposes. In 1997, \$309,929 was awarded, making a total of \$2.25 million since 1985.

The grant application consists of a financial budget supported by a narrative proposal not to exceed eight pages. The Trustees prefer grant applications which specifically describe the purpose of the request and how the funds are to be used. Those receiving grants

must agree to report the use of the funds.

Organization seeking grants may obtain application forms from the Utah Bar Foundation office in the Utah Law & Justice Center, 645 S. 200 East, Salt Lake City, Utah 84111 (297-7046). The deadline to submit applications for 1998 grants is **May 31, 1998**.

CLE CALENDAR

1998 MID-YEAR CONVENTION

Date: March 5-7, 1998
Place: St. George Holiday Inn
CLE Credit: 9 HOURS, which includes up to 2 in ETHICS

**To register, please use the registration form that will be provided in the 1998 Mid-Year Convention brochure. This brochure will be mailed directly to you.*

ALI-ABA SATELLITE SEMINAR: HOW TO HANDLE BASIC COPYRIGHT AND TRADEMARK PROBLEMS

Date: Thursday, March 12, 1998
Time: 9 a.m. to 4:00 p.m.
Place: Utah Law & Justice Center
Fee: \$249.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 6 HOURS

ALI-ABA SATELLITE SEMINAR: HIPAA, COBRA, AND HEALTH PLANS UPDATE

Date: Tuesday, March 17, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$160.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 4 HOURS

NLCLE WORKSHOP: CRIMINAL PROCEDURE

Date: Thursday, March 19, 1998
Time: 5:30 p.m. to 8:30 p.m.
Place: Utah Law & Justice Center
Fee: \$30.00 for Young Lawyer Division Members;
\$60.00 for all others
CLE Credit: 3 HOURS

ALI-ABA SATELLITE SEMINAR: LIMITED LIABILITY VEHICLES—NEW DEVELOPMENTS IN THE ORGANIZATION AND OPERATION OF UNINCORPORATED BUSINESSES

Date: Thursday, March 19, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$160.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 4 HOURS

TRIAL ACADEMY 1998: SESSION II — OPENING STATEMENTS

Date: Wednesday, March 25, 1998
Time: 6:00 p.m. to 8:00 p.m. (Registration begins at 5:30 p.m.)

Place: Utah Law & Justice Center
Fee: \$25.00 for Litigation Section Members; \$35.00 for Non-section Members
CLE Credit: 2 HOURS (NLCLE)

ALI-ABA SATELLITE SEMINAR: LITIGATORS UNDER FIRE! ETHICS AND PROFESSIONALISM UPDATE

Date: Thursday, April 9, 1998
Time: 10:00 a.m. to 1:15 p.m.
Place: Utah Law & Justice Center
Fee: \$175.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 3.5 HOURS ETHICS

NLCLE WORKSHOP: LAW OFFICE MANAGEMENT

Date: Thursday, April 16, 1998

Time: 5:30 p.m. to 8:30 p.m. (Registration begins at 5:00 p.m.)
Place: Utah Law & Justice Center
Fee: \$30.00 for Young Lawyers Division Members;
\$60.00 for all others

ALI-ABA SATELLITE SEMINAR: BUSINESS VALUATION — WHAT EVERY BUSINESS LAWYER SHOULD KNOW

Date: Thursday, April 16, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: \$160.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 4 HOURS

Those attorneys who need to comply with the New Lawyer CLE requirements, and who live outside the Wasatch Front, may satisfy their NLCLE requirements by videotape. Please contact the CLE Department (801) 531-9095, for further details.

Seminar fees and times are subject to change. Please watch your mail for brochures and mailings on these and other upcoming seminars for final information. Questions regarding any Utah State Bar CLE seminar should be directed to Monica Jergensen, CLE Administrator, at (801) 531-9095.

CLE REGISTRATION FORM

TITLE OF PROGRAM	FEE
1. _____	_____
2. _____	_____
Make all checks payable to the Utah State Bar/CLE	Total Due
Name _____ Phone _____	
Address _____ City, State, Zip _____	
Bar Number _____	American Express/MasterCard/VISA _____ Exp. Date _____
Credit Card Billing Address _____ City, State, ZIP _____	
Signature _____	

Please send in your registration with payment to: **Utah State Bar, CLE Dept., 645 S. 200 E., S.L.C., Utah 84111.** The Bar and the Continuing Legal Education Department are working with Sections to provide a full complement of live seminars. Please watch for brochure mailings on these.

Registration Policy: Please register in advance as registrations are taken on a space available basis. Those who register at the door are welcome but cannot always be guaranteed entrance or materials on the seminar day.

Cancellation Policy: Cancellations must be confirmed by letter at least 48 hours prior to the seminar date. Registration fees, minus a \$20 nonrefundable fee, will be returned to those registrants who cancel at least 48 hours prior to the seminar date. No refunds will be given for cancellations made after that time.

NOTE: It is the responsibility of each attorney to maintain records of his or her attendance at seminars for purposes of the 2 year CLE reporting period required by the Utah Mandatory CLE Board.

CLASSIFIED ADS

RATES & DEADLINES

Bar Member Rates: 1-50 words — \$20.00 / 51-100 words — \$35.00. Confidential box is \$10.00 extra. Cancellations must be in writing. For information regarding classified advertising, please call (801) 297-7022.

Classified Advertising Policy: No commercial advertising is allowed in the classified advertising section of the Journal. For display advertising rates and information, please call (801) 486-9095. It shall be the policy of the Utah State Bar that no advertisement should indicate any preference, limitation, specification or discrimination based on color, handicap, religion, sex, national origin or age.

Utah Bar Journal and the Utah State Bar Association do not assume any responsibility for an ad, including errors or omissions, beyond the cost of the ad itself. Claims for error adjustment must be made within a reasonable time after the ad is published.

CAVEAT — The deadline for classified advertisements is the first day of each month prior to the month of publication. (Example: May 1 deadline for June publication). If advertisements are received later than the first, they will be published in the next available issue. In addition, payment must be received with the advertisement.

POSITIONS AVAILABLE

Civil Rights Attorney: Public interest law firm seeks experienced litigation attorney with a commitment to the rights of citizens with disabilities. Persons of color, women and persons with disabilities encouraged to apply. Position is located in our Cedar City office. Submit resume and letter of application to Ronald J. Gardner, Legal Director, Disability Law Center, 455 East 400 South #410, Salt Lake City, Utah 84111. Equal Opportunity Employer.

Successful personal injury lawyer with 16 year practice seeks motivated lawyer to share cases on contingency. Move into office and enjoy large reception area, conference room and ample parking. Rent negotiable. Call and leave message: (801) 964-6100.

ESTABLISHED GENERAL PRACTICE SLC FIRM SEEKS ASSOCIATE WITH PARTNERSHIP POTENTIAL. Must have 5 to 7 years legal experience. Must understand estate planning and tax and be willing to participate in litigation. Please send resume to: Maud C. Thurman, Utah State Bar, 645 South 200 East, Confidential Box #46, Salt Lake City, Utah 84111.

POSITIONS SOUGHT

ENTERTAINMENT LAW: Denver-based attorney licensed in Colorado and California available for consultant or of-counsel services. All aspects of entertainment law, including contracts, copyright and trademark law. Call Ira C. Selkowitz @ (800) 550-0058.

ATTORNEY: Former Assistant Bar Counsel. Experienced in attorney discipline matters. Familiar with the disciplinary proceedings of the Utah State Bar. Reasonable rates. Call Nayer H. Honarvar, 39 Exchange Place, Suite #100, Salt Lake City, UT 84111. Call (801) 994-2675.

CALIFORNIA LAWYER . . . also admitted in Utah! I will make appearances anywhere in California, research and report on California law; and in general, help in any other way I can. \$75 per hour + travel expenses. Contact John Palley @ (916) 455-6785 or john@palley.com.

OFFICE SPACE / SHARING

LARGE CORNER OFFICE available. Small downtown estate planning firm located in classic landmark building. Excellent decor, including wood floors and large windows. Digital phones, fax, copier, small and large conference rooms and receptionist available. Also, free exercise facilities with showers. Prefer attorney or CPA. Call (801) 366-9966.

Deluxe office space for one attorney. Avoid the rush hour traffic. Share with three other attorney's. Facilities include large private office, large reception area, parking immediately adjacent to building, Utah Law on disc, fax, copier, telephone system, kitchen facilities. 4212 Highland Drive. Call (801) 272-1013.

Historic Building on Exchange Place leasing 1600 square foot office space with five individual offices, reception/secretarial area, storage room with separate outside entrance. Suite is located half block from new courts complex and Federal court. Great for small firm requiring easy court access. 4 to 5 parking stalls available. Contact Joanne Brooks @ (801) 534-0909.

New deluxe office space in Draper with good access for one or two attorneys to share with two established attorneys. Excellent location to avoid commute. Facilities include large offices with extensive windows, conference room, fax, copier, telephone, reception, kitchen, parking adjacent to front door. Call

(801) 495-3500.

Deluxe office space for one attorney, 7321 South State, Midvale, Utah. Avoid freeway congestion. Conference room, reception area, secretarial space, wet bar and refrigerator. Large parking lot, copy machine, fax, etc. (801) 562-5050 or 256-0329.

OFFICE SHARING: Historic Bamburgh, 623 East 100 South, SLC. One or two lawyers. Call John @ (801) 363-9345.

Office share opportunity in small Park City Law Office. Good location, low overhead. Ideal for part-time attorney. Contact Grant Macfarlane @ (435) 649-2014.

SERVICES

SEXUAL ABUSE/DEFENSE: Children's Statements are often manipulated, fabricated, or poorly investigated. Objective criteria can identify valid testimony. Commonly, allegations lack validity and place serious doubt on children's statements as evidence. Current research supports **STATEMENT ANALYSIS**, specific juror selection and instructions. B. Giffen, M.Sc. Evidence Specialist American College Forensic Examiners. (801) 485-4011.

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APPRAISALS: CERTIFIED PERSONAL PROPERTY APPRAISALS/COURT RECOGNIZED — Estate Work, Divorce, Antiques, Insurance, Fine Furniture, Bankruptcy, Expert Witness, National Instructor for the Certified Appraisers Guild of America. Twenty years experience. Immediate service available, Robert Olson C.A.G.A. (801) 580-0418.

Get to Know Your Bar Staff



DARLA MURPHY

Darla is the Admission Administrator. She has been with the Bar since October 1988. She administers the bar examination twice a year for approximately 450 applicants. Darla is responsible for coordinating the Bar Examiner Committee; Bar Examiner Review Committee; Character and Fitness Committee and the Admissions Committee. She goes to the BYU Law School and the University of Utah Law School to educate the third year law students in regards to the bar exam and coordinates the Admissions Ceremony with the courts. If you need a Certificate of Good Standing or a new bar card she is the person to help you. No, the 49ers, Steve Young has not taken the bar exam.

Although Darla was raised in Provo, she is a true Utah Ute fan. Before Darla started her career working at the bar, she was the cool-aid Mom for her neighborhood and her 4 children. Now she has become the weekend cool-aid grandma to her 3 grandchildren.

She loves to spend her spare time out of

doors camping, fishing, golfing and skiing, that is if she is not tending her grandchildren. She also loves traveling, she has traveled to Japan, Korea, Aruba, Antigua, Tahiti, Virgin Islands and lived in Mexico for a few months with 3 of her children.

Every July when a previously elected President takes office, Darla says "it's a whole new adventure."



STACEY A. KARTCHNER

Stacey coordinates for the Office of Professional Conduct its work with the Ethics and Discipline Committee. She schedules hearings, notifies the parties and witnesses, and prepares the files for four Screening Panels a month, which consists of twenty-four lawyer members and four lay members. She also has the responsibility of assisting Kate Toomey, Assistant Counsel, in all aspects of litigation and in all stages of appellate advocacy.

Stacey was born and raised in Salt Lake City. She is very close to her parents and one sister. She was her father's little tomboy. She participated in athletics all throughout

school. She played basketball, volleyball, and was the star center on her high school soccer team. She is remembered from high school as scoring more goals her senior year than everyone else on the team combined.

Stacey is an avid sports fan. She still enjoys playing, as well as watching, sports. After hours, you will find her at basketball games, hockey games, and car races. The time she enjoys the most is when she goes with her father to the Nascar races. Her favorite driver is Mark Martin. Stacey's other interests include water and snow skiing, sky diving, and traveling.

Stacey just earned her bachelor's degree from the University of Utah this spring. Go Utes! She will be entering law school this fall. Her passion is in the area of criminal law. Prior to coming to work at the Bar, Stacey worked in a criminal defense law office. After working in that office and truly seeing and understanding what criminal defense lawyers do, she realized that she wanted to be a part of that group of lawyers whose efforts guarantee to us all the rights, the freedoms, and the protections of the Constitution of this great country. She aspires to follow in the footsteps of Gilbert Athay, her mentor and best friend.

Attorneys Needed to Assist the Elderly Needs of the Elderly Committee Senior Center Legal Clinics

Attorneys are needed to contribute two hours during the next 12 months to assist elderly persons in a legal clinic setting. The clinics provide elderly persons with the opportunity to ask questions about their legal and quasi-legal problems in the familiar and easily accessible surroundings of a Senior Center. Attorneys direct the person to appropriate legal or other services.

The Needs of the Elderly Committee supports the participating attorneys, by among other things, providing information on the various legal and other services available to the elderly. Since the attorney serves primarily a referral function, the attorney need not have a background in elder law. Participating attorneys are not expected to provide continuing legal representation to the elderly persons with whom they meet and are being asked to provide only

two hours of time during the next 12 months.

The Needs of the Elderly committee instituted the Senior Center Legal Clinics program to address the elderly's acute need for attorney help in locating available resources for resolving their legal or quasi-legal problems. Without this assistance, the elderly often unnecessarily endure confusion and anxiety over problems which an attorney could quickly address by simply directing the elderly person to the proper governmental agency or pro bono/low cost provider of legal services. Attorneys participating in the clinics are able to provide substantial comfort to the elderly, with only a two hour time commitment.

The Committee has conducted a number of these legal clinics during the last several months. Through these clinics, the Committee has obtained the experience to

support participating attorneys in helping the elderly. Attorneys participating in these clinics have not needed specialized knowledge in elder law to provide real assistance.

To make these clinics a permanent service of the Bar, participation from individual Bar members is essential. Any attorneys interested in participating in this rewarding, yet truly worthwhile, program are encouraged to contact: Tom Christensen or Mary Ann Fowler @ 531-8900, Fabian and Clendenin, 215 South State, #1200, Salt Lake City, Utah 84111.

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Tel: 532-1234

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Tel: 379-2505

***H. Reese Hansen**
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***Carolyn B. McHugh**
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Tel: 532-7840

***Lee E. Teitelbaum**
Dean, College of Law, University of Utah
Tel: 581-6571

UTAH STATE BAR STAFF

Tel: 531-9077 • Fax: 531-0660
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Executive Offices

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Assistant Executive Director
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Tel: 297-7031

Katherine A. Fox
General Counsel
Tel: 297-7047

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Tobin J. Brown
*Access to Justice Coordinator
& Programs Administrator*
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Pro Bono Project

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Tel: 297-7049

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Admissions Administrator
Tel: 297-7026

Lynette C. Limb
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Tel: 297-7025

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Bar Programs Coordinator
Tel: 297-7022

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CLE Administrator
Tel: 297-7024

Amy Jacobs
CLE Assistant
Tel: 297-7033

Finance Department

J. Arnold Birrell
Financial Administrator
Tel: 297-7020

Joyce N. Seeley
Financial Assistant
Tel: 297-7021

Lawyer Referral Services

Diané J. Clark
LRS Administrator
Tel: 531-9075

Law & Justice Center

Marie Gochmour
Law & Justice Center Coordinator
Tel: 297-7030

Consumer Assistance Coordinator

Jeannine Timothy
Tel: 297-7056

Receptionist

Summer Shumway (a.m.)
Kim L. Williams (p.m.)
Tel: 531-9077

Other Telephone Numbers & E-mail Addresses Not Listed Above

Bar Information Line:
297-7055

Mandatory CLE Board:
Sydnie W. Kuhre
MCLE Administrator
297-7035

Member Benefits:
297-7025
E-mail: ben@utahbar.org

Web Site:
www.utahbar.org

Office of Professional Conduct

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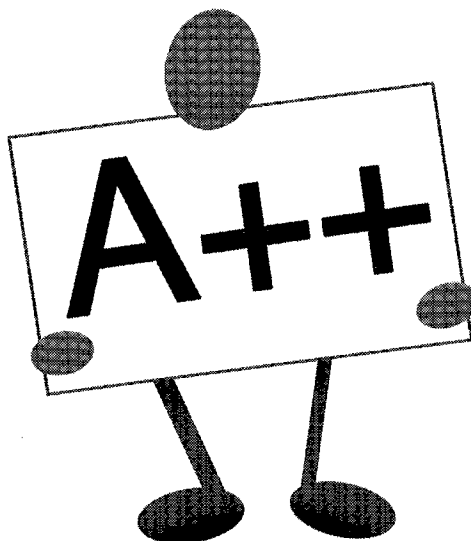
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645 South 200 East

Salt Lake City, Utah 84111-3834

Telephone (801) 531-9077 FAX (801) 531-0660

Name: _____ Utah State Bar Number: _____

Address: _____ Telephone Number: _____

Professional Responsibility and Ethics

Required: a minimum of three (3) hours

1. _____
Provider/Sponsor _____
Program Title _____
Date of Activity _____ CLE Hours _____ Type of Activity** _____
2. _____
Provider/Sponsor _____
Program Title _____
Date of Activity _____ CLE Hours _____ Type of Activity** _____

Continuing Legal Education

Required: a minimum of twenty-four (24) hours

1. _____
Provider/Sponsor _____
Program Title _____
Date of Activity _____ CLE Hours _____ Type of Activity** _____
2. _____
Provider/Sponsor _____
Program Title _____
Date of Activity _____ CLE Hours _____ Type of Activity** _____
3. _____
Provider/Sponsor _____
Program Title _____
Date of Activity _____ CLE Hours _____ Type of Activity** _____
4. _____
Provider/Sponsor _____
Program Title _____
Date of Activity _____ CLE Hours _____ Type of Activity** _____

IF YOU HAVE MORE PROGRAM ENTRIES, COPY THIS FORM AND ATTACH AN EXTRA PAGE

****EXPLANATION OF TYPE OF ACTIVITY**

A. Audio/Video Tapes. No more than twelve hours of credit may be obtained through self-study with audio and video tapes. See Regulation 4(d)-101(a).

B. Writing and Publishing an Article. Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. An application for accreditation of the article must be submitted at least sixty days prior to reporting the activity for credit. No more than twelve hours of credit may be obtained through writing and publishing an article or articles. See Regulation 4(d)-101(b).

C. Lecturing. Lecturers in an accredited continuing legal education program and part-time teachers who are practitioners in an ABA approved law school may receive three hours of credit for each hour spent in lecturing or teaching. No more than twelve hours of credit may be obtained through lecturing and part-time teaching. No lecturing or teaching credit is available for participation in a panel discussion. See Regulation 4(d)-101(c).

D. CLE Program. There is no restriction on the percentage of the credit hour requirement which may be obtained through attendance at an accredited legal education program. However, a minimum of one-third of the credit hour requirement must be obtained through attendance at live continuing legal education programs.

THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION SEE REGULATION 4(d)-101 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.

Regulation 5-102 — In accordance with Rule 8, each attorney shall pay a filing fee of \$5.00 at the time of filing the statement of compliance. Any attorney who fails to complete the CLE requirement by the December 31 deadline shall be assessed a **\$50.00** late fee.

I hereby certify that the information contained herein is complete and accurate. I further certify that I am familiar with the Rules and Regulations governing Mandatory Continuing Legal Education for the State of Utah including Regulations 5-103(1).

DATE: _____ **SIGNATURE:** _____

Regulation 5-103(1) — Each attorney shall keep and maintain proof to substantiate the claims made on any statement of compliance filed with the board. The proof may contain, but is not limited to, certificates of completion or attendance from sponsors, certificates from course leaders or materials claimed to provide credit. This proof shall be retained by the attorney for a period of four years from the end of the period of which the statement of compliance is filed, and shall be submitted to the board upon written request.



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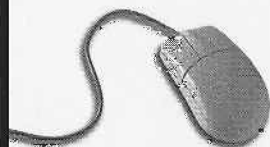


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