Utah Bar JOURNAL

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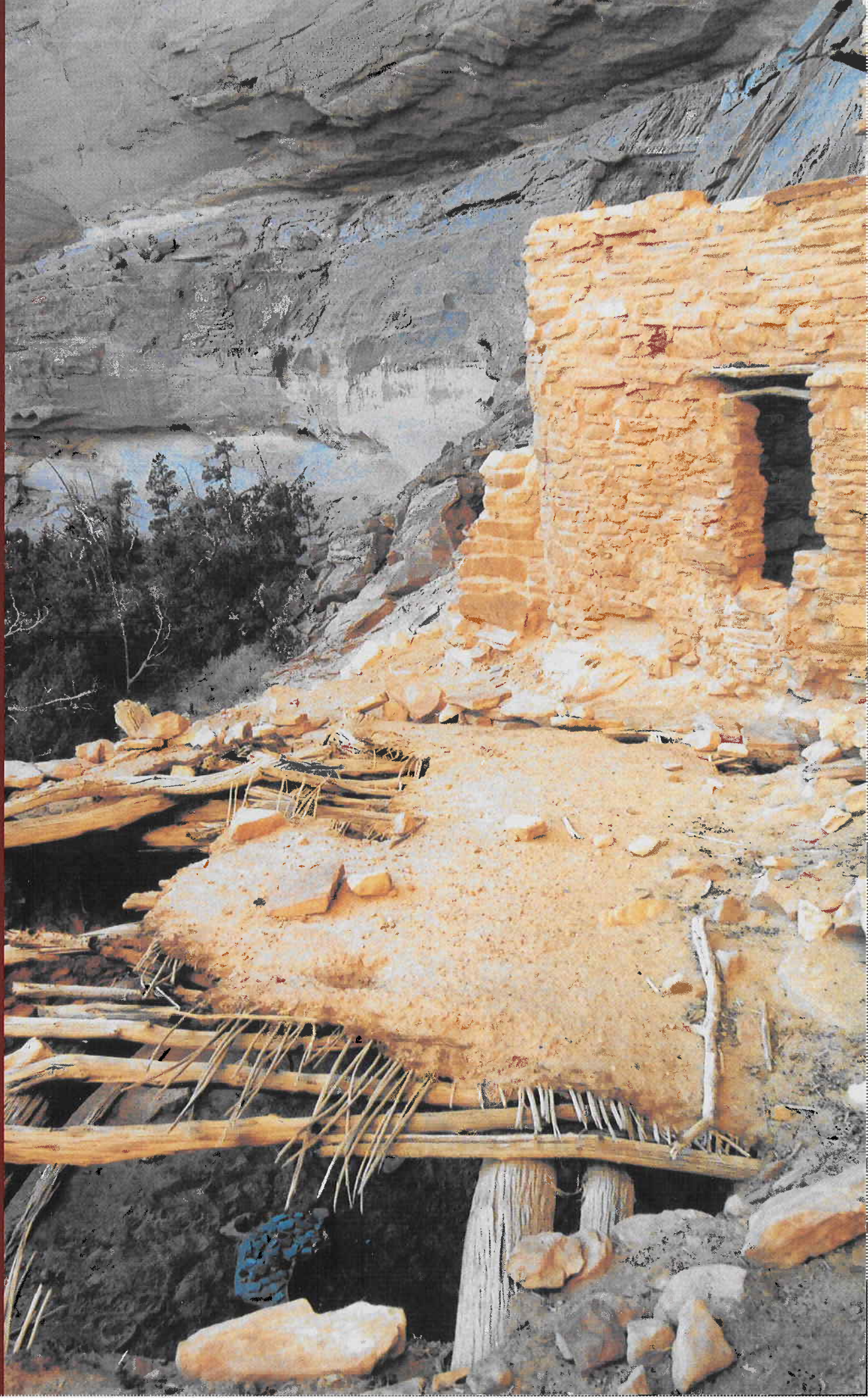
May 1998



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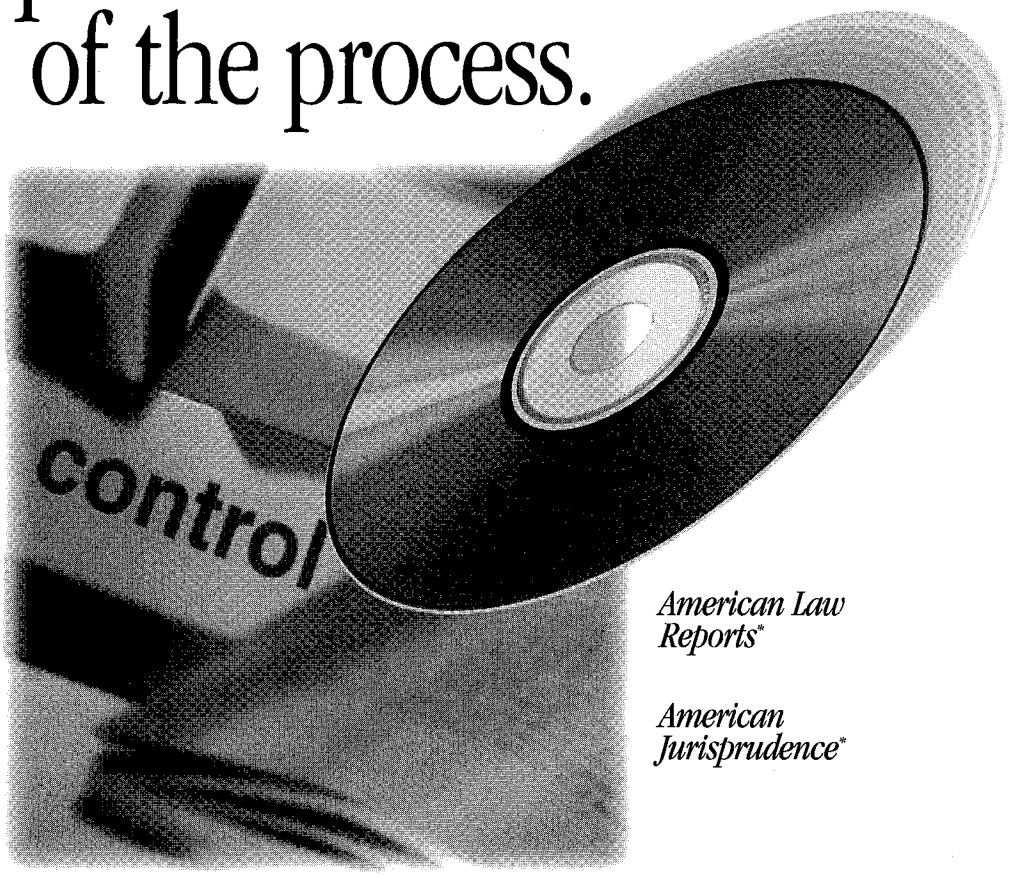

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VISION OF THE BAR: *To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.*

MISSION OF THE BAR: *To represent lawyers in the State of Utah and to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of the law.*

COVER: Anasazi Cliff Dwelling, Grand Gulch Utah, by Brett P. Johnson.

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Letters Submission Guidelines:

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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The Flesh and Blood Future of the Bar

by Charlotte L. Miller

There has been a great deal of discussion recently about the future of the Bar. At least the Bar Commission has been discussing the future, and hopefully some of you have been following (and participating in) that discussion. We have been looking at the future as a long range planning document, or ideas about how the practice of law will change. Within the last month I have had the opportunity to visit with those who see the real live future of the Bar on a daily basis: law students. I attended an ABA accreditation meeting at the J. Reuben Clark School of Law, and the Alumni lunch for the University of Utah College of Law.

The ABA accreditation team was interested in how the legal community perceives the J. Reuben Clark Law School and its graduates. In the accreditation meeting we discussed issues of civility, competence, internships, performance testing, access to justice, opportunities for practical experience, service to the Bar, employment opportunities and professionalism. Everyone in attendance praised the J. Reuben Clark Law School for its many achievements and the quality of its graduates.

Jerome Shestack, President of the ABA, spoke at the University of Utah Annual Alumni Event. While visiting privately with him during the day, he told me that he had spoken to some classes of students at the University of Utah College of Law and how impressed he was with the students. He had asked one class why they wanted to be lawyers. The answers that most impressed him were: "to help solve problems" and "to be at the heart of the passions of people and society." Those answers reflected a real understanding of lawyers' roles in society.

I encourage each of you to support our local law schools. Not just financially (although that helps). Volunteer to speak to classes, to meet with students and faculty, to judge moot court, to participate in any way that may be useful. Go visit the law school. There have been some changes since most of us graduated. Talk with the deans and the faculty about your experiences with their new graduates.

Sections, Committees and local Bar organizations should find methods to interact with law students. This past year, law students from both law schools assisted with the National Association of Women Judges conference and the First Hundred Celebration. That interaction was beneficial to the law students and the members of the Bar. The students who attended the NAWJ luncheon as the Bar's guests were grateful to be included. There is no reason that a law student's first experience with the Bar is the Bar exam when there are so many opportunities to include law students in Bar events. The best mentoring is an individual lawyer voluntarily lending support to law students. Do not wait for some program to push you to do what you have the opportunity to do now.

Lawyers benefit from this interaction with law students. A friend sent me an e-mail this year that said "cynics are idealists who have become discouraged and given up." Lawyers can always use a little idealism. Risk being reminded of your own unpleasant law school experiences and you may find some inspiration and idealism.

Utah State Bar

Take Me to Your *Leader*

by Denise A. Dragoo

As a member of the Utah State Bar, you may be surprised to learn that you do not elect your President. A President-Elect is chosen from the Board of Bar Commissioners through a process which effectively forecloses direct participation by Bar members. Under this quasi representational system, the Bar members elect eleven Commissioners from five districts throughout the State who then choose a President-Elect. The only direct input of members into this process is to vote against the pre-selected candidate in a "retention election." The President-Elect selected by less than .0021% of the Bar can be rejected only by a vote of more than 50% of our membership.

Currently members have no direct vote for President-Elect and have an ineffective veto power. Therefore, it is essential that the elected Bar Commissioners are representative of the electorate. Unfortunately, Commissioners are not apportioned to the members who elect them on a one-person/one-vote basis. The allocation of Commissioners to voting members is skewed such that a member in the First District has essentially five times the voting clout of a member in the more populous Third District. There are 91 active members in the First District represented by one commissioner and 3,494 voting members in the Third District represented by seven Commissioners (approximately 500 members per Commissioner). While this malapportionment does not affect the judicial and administrative powers of the Bar Commission, it clearly distorts its electoral functions. *See, Sullivan v. Alabama State Bar*, 295 F. Supp 1216 (M.D. Ala.), *aff'd without opinion*, 394 U.S. 812 (1969).

Recognizing the need for reform in the electoral process, the Bar Commission formed an elections procedure committee to study the issue. The recommendations of the committee were presented in 1997 to avoid conflict with the 1998 election for President-Elect.[1] The committee recommended: (1) direct election of the President-Elect by the members at large, (2) elimination of the retention election, and (3) reapportionment of elected Commissioners to reflect one person one vote.

DIRECT ELECTION OF PRESIDENT-ELECT

Currently, to be qualified for President-Elect, a candidate must be a lawyer in good standing with the Utah State Bar and an elected member of the Commission. Ex officio and public members of the Board are not eligible to be President-Elect. Based upon these qualification the committee recommended that the Commission nominate two Board members to run for election at large.[2] A slate of two Commission candidates allows the selection of a President-Elect familiar with the long range goals and objectives of the Board. The committee was also open to the nomination of bar members at large providing that such candidates have the support of a significant percentage of the membership. Election of the President-Elect by all members enables the candidate to present a campaign platform to the entire Bar. This improves communication between Bar leaders and members and involves all lawyers in a meaningful choice in the direction of Bar affairs.

ELIMINATE THE RETENTION ELECTION

Whether or not the election is opened to the vote of all members, the committee recommends elimination of the retention election. The retention ballot gives members the false illusion that they can reject the pre-selected candidate for President-Elect. In reality, the large percentage of votes required to remove the candidate renders the retention election meaningless. Ironically, the retention ballot was created to enhance member participation in response to the Final Report of the Supreme Court Task Force.[3] As initially proposed, the vote of only 20% of members would unseat a candidate. However, the Rules of Integration adopted by the Commission increased this percentage to more than 50%. (Compare ¶7, Rules of Integration to Recommendation No. 12, Final Report of the Supreme Court Task Force, November 1, 1991.) The veto vote against a candidate should be replaced with a direct vote of all members for President-Elect. Upon elimination

of the retention election monies budgeted to mail retention ballots could be redirected to defray campaign costs for mailings by President-Elect candidates.

REAPPORTIONMENT

Finally, the committee recommended reapportionment of the Commission to reflect one person/one vote. The First District (91 members) could be combined with the Second District (416 members) or the Fifth District (246 members) and represented by one Bar Commissioner. To address the current dilution of votes, at least one additional Commissioner should be added to the more populous Third District (3,494 members).

PETITION TO THE UTAH SUPREME COURT

Unfortunately, none of the recommendations of the elections procedure committee was adopted by the Bar Commission. In fact, due to the politics of collegiality, the Bar Commission may not be capable of making significant changes to the process of electing its leader. For this reason, committee members along with other bar members propose to petition the Utah Supreme Court to implement these recommendations. In connection with this petition, we solicit your input regarding the President-Elect selection process. Please forward your comments to me at P.O. Box 45340, Salt Lake City, Utah 84145, facsimile no. (801) 534-0058 or e-mail address ddragoo@vancott.com. Your voice should be heard in determining the leadership of the Utah State Bar.

[1]Recommendations of Election Procedures Committee, September 10, 1997, D. Frank Wilkins and Denise A. Dragoo.

[2]This recommendation is consistent with the preliminary report of the Special Task Force on the Management and Regulation of the Practice of Law created pursuant to the Utah Supreme Court order dated August 10, 1990, chaired by Peter W. Billings, Sr. ("Supreme Court Task Force").

[3]Recommendation No. 12, Final Report of the Supreme Court Task Force, November 1, 1991.

Practicing Law on the Internet

by Toby Brown

Fear seems to be the biggest motivator these days for lawyers to start utilizing the Internet in their practices. This fear appears to be split between fear of the unknown and fear of being left behind. Of course these two fears are incompatible, since you will be left behind if you do not face the unknown. This article attempts to deal with both of these fears. Hopefully after reading this, the Internet will become less "unknown" and maybe even compelling, bringing you up-to-date on a number of law related Internet topics.

Assuming a broad range of knowledge among my audience, I will start with relatively basic Internet concepts and move towards actually practicing law on the Internet. So, if you are already partially "assimilated," you may want to skim ahead.

CONNECTING TO THE INTERNET

There are two basic options for obtaining an account to connect to the Internet: local providers and national providers. These providers are usually referred to as Internet Service Providers or ISPs. As usual there are advantages to each type of provider. National providers, such as America On-Line (AOL), can be accessed almost anywhere in the U.S. and have value-added information native to their sites, such as directories and databases of other information. This unfortunately is their downside as well, as you must wade through these "value-added" features to the real Internet.[1] I prefer local ISPs due to the accessibility and local support they provide and because they can better facilitate web site development, as your Internet presence grows.

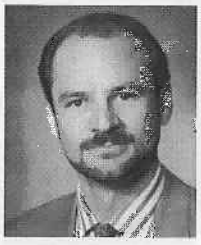
As a Bar member you can take advantage of a discount ISP package set up with Arosnet, a Utah ISP. This Utah State Bar Connection Plan provides discounted access, support and other services. This plan has options for expanding your link to the Internet as well as your web services for clients. For more information about this plan, contact Lincoln Mead of Arosnet at (801) 924-9070 or at lincoln@aros.net.

I will not go into all of the types of physical Internet connections here. Basically you need some type Pentium or Macintosh Power PC computer, some sort of modem hardware (28.8 or better recommended) on your computer or network, a phone line and access to the modem type hardware at an ISP. The usual economic principles apply since the faster, full time connections are of course, more expensive. You should have a plan in place before you implement your Internet connection and/or web page and your physical connection type will be based on those decisions.

NAVIGATING THE INTERNET

The next question I am usually asked is which Internet Browser should I use? The browser is the software which enables you to "surf" the Internet. With the browser you can navigate through different sites on the Internet. Your two real choices for a browser are Netscape Navigator and Internet Explorer (IE), from Microsoft. Coincidentally, the most recent version of both of these products is version 4.0 and they are both available free on the Internet. Which one should you use? This is a Ford versus Chevy argument. I use them both, but primarily use IE, since it integrates well with my other software programs. Try them both and use the one you like. They both have similar functionality but sometimes label functions differently. For example, Netscape calls its list of saved Internet sites "Bookmarks" and IE calls them "Favorites."

Once you are connected and on-line with a browser, you will want to start surfing or browsing. You have likely seen Internet sites advertised everywhere. Internet addresses, called URLs,[2] usually look like this: http://www.utahbar.org/directories.html. The "http://" is a geek-onym you won't care about and isn't usually listed when a site is advertised. The newest version of Netscape and IE automatically add "http://" when you enter a URL in them. The "www" stands for world wide web. Most addresses have a "www" but not all do. In the example above, the "utahbar.org" is the actual site, which is called the domain name of the address. Whatever follows, such as "/directories.html" above, directs your browser to a specific page within that site.



Toby Brown is the Programs Administrator for the Bar. He administers the Bar's network, oversee the Bar's web page and knows many acronyms, such as VTT.

Some URLs are quite long, especially if you are doing a search. But the important part is the part that follows "www." If you type that in the browser, it will take you to the site.

Let's start with general Internet searches. There are a number of search engines on the Internet. These search engines are Internet sites which allow you to search for any Internet site by words or phrases. Examples of search engine sites are: Yahoo, Altavista, Hotbot, Infoseek, etc. These are organized in two basic ways. Some list Internet sites by category, such as Yahoo.[3] Others, such as Altavista list search results by site only. Each has its advantages, however, I have found the category listing useful when your search is broad. The categories help you narrow your search from the initial results.

If your search finds something you want, you can print it, or save it, or download a program. If you are downloading, I guess I should warn you about computer viruses. I *always* run a computer virus scanning program on my computer. I suggest you do the same. Popular scanning programs include: Cheyenne Antivirus, Norton Antivirus and McAfee. These products scan anything new to your system, such as diskette introduced files and Internet-based files and pictures. All of these are good products, but should be updated frequently. I am currently using Cheyenne and have it set-up to download updates automatically from the Internet once a month. With this system I am protected against the newest viruses out there.

"Back to search engines, there are legal specific search engines available for free on the Internet. One excellent example is www.findlaw.com. This site is arranged a lot like the Yahoo search engine, with useful categories for finding legal resources on the Internet."

LEGAL STUFF ON THE INTERNET

Back to search engines, there are legal specific search engines available for free on the Internet. One excellent example is www.findlaw.com. This site is arranged a lot like the Yahoo search engine, with useful categories for finding legal resources on the Internet.

The question I get usually after opening a discussion on legal research sites is: "Can the Internet replace Lexis and Westlaw?" The simple answer is "Not yet." You can find specific resources on the Internet, such as the Utah Code on the Legislature's site. But it is very cumbersome to run a search for statutory language and case law on specific topics for multiple jurisdictions on the Internet. I would still use one of the major legal databases for that type of analytical research or you might consider other for-profit legal sites on the web such as Code Co. Code Co has an excellent site for searching Utah law, with a great search engine. The best value for your money depends on your needs. However, the Internet will likely link you up to most of these resources, even Lexis and Westlaw. And if you are looking for a cited case or statute, the odds are you can find it using the Internet.

To get you thinking in new directions there are two legal sites you should visit. The first one is www.legaldocs.com. This site is a document generation site. For a small fee (and in some cases for free), you can answer a series of questions and generate a document customized to your answers. Sample documents include wills, trusts, and employment agreements. Hopefully this site will serve as a wake-up call for the legal profession. Consumers appreciate these types of easily accessible services.

As a lawyer, will you lose business to sites like these? Perhaps. But at the same time (and here is the wake-up call part) you can get business with a site like this. Check out www.lawutah.com/gb/docs/Calc.htm. The law firm of Greenwood & Black has an on-line Utah child support calculator here.[4] Clients who visit this site get to check their potential child support payments on-line. However, these same clients will likely need a lawyer to proceed with a court action. Who might they hire? Hopefully this discussion gets you thinking along new lines for utilizing the Internet in your practice.

Before we move on to actually practicing law on the Internet, you should note there are many excellent government and bar related resources on the Internet. Generally, you can find a lot of government laws and forms for free on the official government sites. For instance, the IRS has downloadable forms on its site. Like most government sites, these files are in a PDF format. PDF stands for "portable document format." This format-tool retains all of the original paper-based formatting, so that all downloaded copies of the file will have the exact same fonts, margins, etc., as the original. To download and read PDF files you will need a software program called Adobe Acrobat Reader. Every site I have ever been to which requires the Acrobat Reader has a link to a free download site for this software. Click on the link and follow the instructions to get this useful program.

One other government site of particular note is the Salt Lake

County Recorder's site. It has a strong search engine for doing on-line searches of title documents. There is a small fee to offset the costs for this site, but it is well worth the price if you need title documents on a regular basis. Many title companies are already utilizing this service.

Another great site for lawyers is the ABA's site. Go to www.abanet.org to find this site. It has a lot of useful information and links to legal related sites. Of course the main bar related site you should visit is www.utahbar.org, the Utah State Bar's page. Useful items of note on this site are the searchable on-line directory, the events calendar and the ever growing section pages. Check it out.

PRACTICING LAW ON THE INTERNET

A primary hurdle to practicing law on the Internet has been the issue of signing documents. Utah is in the forefront in this regard. Utah was the first state to enact a digital signature law. As of November 1, 1997, when the regulations were finalized, digital signatures became legal in Utah. This has removed a major obstacle and opened a door of opportunity for Utah lawyers.

But what are digital signatures and how do they work? First off, digital signatures are not the *digitized* signatures which FedEX or UPS gets from you. Those are merely electronic pictures of your signatures. True digital signatures are actually algorithmic key-pairs. Fully describing digital signatures is an article in itself. Here I hope to just give you the basic idea. The key pair has two parts: the private key and the public key. You are the only one who has access to your private key. You can keep it on a disk or the hard drive on your computer. When you "sign" a document, you are actually running the algorithm from your private key. This encrypts your message and creates a "very small document summary."[5] Then you send your message electronically. For argument's sake, pretend I am sending this article to Dave Nuffer, my favorite Bar Commissioner[6] and fellow "geek."[7] Dave's computer automatically goes to an Internet site called a repository and obtains the public half of my key-pair. The repository's purpose is to house digital signatures and verify their use. With my public key, Dave's computer runs the same process I did above. This creates a new "very small document summary." If the two "very small document summaries" match, then the document has not been modified or altered in transmission. As well, this process verifies that it was me who actually signed the document. This verification is created when you obtain your digital signature certification from an approved Certification Authority (CA). To confirm your identity, CA's must obtain information from you (like your driver's license) before they issue you a certification and place your public key in their repository.

I know this digital signature thing sounds complicated and you probably will want some questions answered before you use one. This is understandable.[8] However, as complicated as it sounds, it will merely be the click of an option on your e-mail or browser software. The computer gods will do the rest. As well, the Bar will disseminate more information about digital signatures soon. We have secured a CA for the Bar in order to make it easy and affordable for Bar members to obtain and utilize digital signatures. Look for information on this soon.

You may have noticed from this article that the Bar is very involved in helping get technology tools to you, our members. By enabling you to more effectively utilize technology, the Bar is helping you be more competitive and productive, which in turn, provides better and more affordable legal services for the public. Along these lines the Bar is involved in the Utah Electronic Law and Commerce Partnership (UELCP).[9] The UELCP is a consortium of the Bar, the courts, lawyers, clients, the Legislature, the Governor's office, various government agencies, and other interested entities that have come together to facilitate the transition from paper-based legal practices to electronic-based practices. The UELCP has been a valuable resource for many of the groups involved, including the Bar. To learn more about the UELCP visit its web site at www.uelp.org. As an example of the value of the UELCP, its efforts influenced the design of the Bar's new On-line Licensing System.

"The Bar's On-line Licensing System is another way for you to utilize the Internet in your practice. Once this system is on-line, you will be able to process your annual dues statement via the Internet."

The Bar's On-line Licensing System is another way for you to utilize the Internet in your practice. Once this system is on-line,[10] you will be able to process your annual dues statement via the Internet. Of course, you will need a digital signature to do this. Once you have a digital signature, it will be very simple for you to come to the Bar's web site, enter your licensing information and process it. We are even working out a means for on-line payment of Bar dues.[11] This system will stream-line the Bar's processing of your licensing forms. Before fear overcomes you, note that paper forms will still be utilized too.

Another place you will be utilizing your digital signature will be with the State courts. The State courts are going to an electronic filing system soon.[12] Watch for more information on this project too.

CONCLUSION

I had some other Internet stuff to tell you as well, but I am withholding it because: A) It gives me the opportunity to write some more stuff,[13] and B) I have probably overwhelmed some of you. Actually, that "overwhelming" part is the greatest benefit of the Internet. The Internet has an immense amount of resources available for you. And it's cheap. Just to give you one final example, I am able to search for affordable airfares, book a flight, book a hotel room and check the weather of my destination on the Internet. Any topic you can think of will probably have similar resources available for you right on the Internet. So Get On It!

Hopefully this article has caused you to think in some new ways and to consider transitioning your practice to electronic-based systems. I have probably raised more questions than I have given answers. So where do you go for answers? You can attempt to contact me[14] or some other geek. Or you can do the obvious, look on the Internet.

[1]Like most good computer geeks, I have biases. When mine show, you are welcome to discount or ignore them.

[2]URL stands for Uniform Resource Locator. See the sidebar note for a listing of other commonly used geek-onyms.

[3]See the other sidebar note for a list of potentially interesting Internet sites.

[4]Unfortunately, I was not paid to advertise this site.

[5]This is a very technical term (VTT) referred to as a VSDS. Actually, I just made that up.

[6]Dave is my favorite Bar Commissioner since he is fluent in geek-onyms (see 2 above). However, in order to cover my rear, all Bar Commissioners should know that I like them . . . a lot.

[7]Dave prefers the term "propeller-head" over geek.

[8]Note the "fear of the unknown" comment at the beginning of this article.

[9]The UELCP was formerly known as the Utah Electronic Law Project.

[10]The On-line Licensing System is scheduled to be available for the 1998-99 licensing cycle in June of 1998, but so was Windows98.

[11]Even if the technology in this article has overwhelmed you, I bet you anticipated this one. Didn't you?

[12]"Soon" is of course a relative term. A criminal practice-based system is already in place. I am told the civil side of things will come on-line later this year.

[13]I put in all these endnotes because my Mom told me lawyers like them and it would make my article more "publishable." Consider this another free tip.

[14]E-mail is the best way to reach me. My address is tbrown@utahbar.org or you can look me up on the Bar's web page.

Internet Sites for Utah Lawyers

UTAH (GOV'T +)

Utah Home page http://www.state.ut.us/ (note URL format applies to all US States)
Utah State Courts http://courtlink.utcourts.gov/
Utah Legislature http://www.le.state.ut.us/
Utah AG's page http://www.at.state.ut.us/
Utah Code http://www.le.state.ut.us/~code/code.htm
Salt Lake City http://www.ci.slc.ut.us/
Salt Lake County http://www.co.slc.ut.us/
Salt Lake County Recorder http://204.99.178.236:443/recpage/index2.html
Utah Electronic Law Project http://www.uelp.org/
Utah Information Technologies Association http://www.uita.org/
Utah Digital Signature Page http://www.commerce.state.ut.us/web/commerce/digsig/dsmain.htm

FEDERAL GOVERNMENT

IRS http://www.irs.ustreas.gov/prod/cover.html
SEC http://www.sec.gov/
US District Court of Utah http://www.utah-uscourts.com/
CFR http://www.access.gpo.gov/nara/cfr/cfr-table-search.html
Federal Codes http://www.abanet.org/lawlink.statutes.html
US Code http://law.house.gov/16.htm
Federal Services http://www.whitehouse.gov/WH/Services/

DIRECTORIES

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Law Directories http://law.house.gov/115.htm
USPS Zip Codes Directory http://www.usps.gov/ncsc/
Utah State Employees Directory http://web.state.ut.us/phone.htm
Law Library Directory http://law.house.gov/114.htm
Legal Association Internet Sites http:/www.abanet.org/lawlink/associations.html
US West http://uswestdex.com/

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Courts info http:/www.ncsc.dni.us/court/sites/courts.htm
National Center for State Courts http://www.ncsc.dni.us/nscs.htm
CA State Court Opinions http://www.courtinfo.ca.gov/opinions/

SEARCH ENGINES

Yahoo http://www.yahoo.com
Altavista http://www.altavista.com
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Hotbot http://www.hotbot.com
Excite http://www.excite.com
Inference Find http://www.inference.com/infind/
Go to http://www.goto.com/
Dogpile Search Site (searches all major engines with one search) http://www.dogpile.com/

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Cornell http://www.law.cornell.edu/
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Matthew Bender http://www.matthewbender.com/auth_main.stm
The Law Engine http://www.fastsearch.com/law/
ILRG Forms http://www.ilrg.com/forms/
'Lectric Law Forms http://www.lectlaw.com//formb.htm
LegalPad http://www.legalpad.com/
Legal Hotlinks http://www.archives.state.ut.us/referenc/legal.htm
RLS On-line research page http://www.romingerlegal.com/
Internet Public Library http://www.ipl.org/
Utah Child Support Calculator http://www.lawutah.com/gb/docs/Calc.htm
Document Generation Site http://www.legaldocs.com

GENERAL INTERNET STUFF

Digital Signature Initiatives – world wide http://www.mbc.com/ds_sum.html
Internet Privacy Coalition (Encryption) http://www.privacy.org/ipc/
Internet Legal Practice Newsletter http://www.collegehill.com/ilp-news/
Salt Lake Weather http://www.weather.com/weather/us/cities/UT_Salt_Lake_City.html
Digital Signature Trust http://www.digsigtrust.com/

WORLD'S BEST INTERNET SITE

http://www-sci.lib.uci.edu/HSG/RefCalculators.html

Acronyms, Geek-onyms & Other Terms of Art

FAQ: Frequently Asked Questions. And hopefully the answers to these.

FTP: File Transfer Protocol – A means to access files on remote computers by logging onto those computers as a user. The purpose of which is to transfer (upload or download) files.

HTTP: Hyper Text Transfer Protocol. It is a way of naming an address or URl on the World Wide Web. Addresses usually take the following format: http://www.findlaw.com/
Note: In the format above the extention tells you the type of site. In this example ".com" indicates a commercial or for-profit site. Other extensions:
.net – Commercial.
.org – Non-profit (usually).
.edu – An educational institution
.gov – Government site.
Also Note: The standard format for state sites is www.state.ut.us. by replacing the "ut" with a state's two digit postal abbreviation, you get that state's site.

HTML: Hyper Text Markup Language. The formatting language or code used to create home pages on the Internet. This is somewhat similar to "reveal codes" in WP 5.1.

Listserv: Subscription mailing lists for special forums or for receiving information; subscriptions are free. Also called Mail Lists.

PEBCAK: Problem Exists Between Chair And Keyboard. Acronym slang for idiot operator errors used by tech support people trying to make it sound sophisticated to the user.[1]

STBY: Sucks To Be You. Usually said when the person you are talking to really screwed up.

Telnet: A program that lets you logon to a remote computer.

URL: Uniform Resource Locator (Techie name for an Internet Address).

WWW: World Wide Web.

[1] PEBCACK and STBY were borrowed from *Silicon Valley Slang*, found at http://www.sabram.com/site/slang.html.

Reconsidering Celotex: *What is the Burden of Production when a Defendant Moves for Summary Judgment on the Ground that the Plaintiff Lacks Evidence?*

by Adam Price

> "[T]he burden on the moving party may be discharged by 'showing' – that is, pointing out to the district court – that there is an absence of evidence in the nonmoving party's case." (Rehnquist, J., writing for the Court)[1]

> "[T]he Court has not clearly explained what is required of a moving party seeking summary judgment on the ground that the nonmoving party cannot prove its case. This lack of clarity is unfortunate: district courts must routinely decide summary judgment motions, and the Court's opinion will very likely create confusion." (Brennan, J., dissenting)[2]

The Supreme Court's decision in *Celotex Corp. v. Catrett* ("*Celotex II*") has been cited as controlling or persuasive authority in over 34,000 published and unpublished judicial opinions. Every first year law student in the last twelve years has read this seminal decision concerning summary judgment procedures under Fed. R. Civ. P. 56. Despite this currency, however, the holding of the *Celotex II* decision, articulated by Justice Rehnquist in the first epigraph above, remains widely misunderstood.

On its face, Justice Rehnquist's choice of language seems to suggest that a defendant may move for summary judgment simply by making a conclusory assertion that the plaintiff lacks sufficient evidence to reach a jury. Nothing, however, could be further from the truth. A close reading of *Celotex II*, in conjunction with the decisions rendered below (*Celotex I*[3] and *Celotex III*[4]), reveals that a defendant must explore the evidentiary basis for the plaintiff's claims through deposition, interrogatory or request for admission before moving for summary judgment on the ground that the plaintiff lacks evidence. That is, the defendant can meet the burden of production only by creating, through the discovery process, a record for the district court to review.

THE DECISION BELOW: MUST THE DEFENDANT DISPROVE THE PLAINTIFF'S CASE TO PREVAIL ON SUMMARY JUDGMENT?

The plaintiff in *Celotex I* sued several asbestos manufacturers whom, she alleged, had produced the asbestos to which her husband had been exposed. During discovery, the defendants filed a set of interrogatories. In particular, Interrogatories Nos. 52 and 53 sought detailed information from the plaintiff about "the type and identity of each such asbestos material with which [her husband] had contact."[5]

The plaintiff's answers to the interrogatories, in June 1981, were non-responsive.[7]

In September 1981, defendant Celotex moved for summary judgment on the ground that plaintiff had "failed to show the decedent came into contact with any product containing asbestos designed, manufactured, or distributed by Celotex."[7] In support of the motion, Celotex directed the district court's attention to the plaintiff's failure to produce any evidence in response to Interrogatories Nos. 52 and 53.

The D.C. Circuit ruled that Celotex had failed to meet its burden of production under Fed. R. Civ. P. 56 and that the plaintiff therefore had no obligation to respond.[8] The *Celotex I* court explained:

> In this case Celotex proffered nothing. It advanced only the naked allegation that the *plaintiff* had not come

Adam Price, a cum laude *graduate of Harvard Law School, worked as an associate at Snow, Christensen & Martineau until 1997. He currently is a law clerk to the Hon. Tena Campbell of the United States District Court for the District of Utah.*

forward in discovery with evidence to support her allegations of decedent's exposure to the defendant's product. Under settled rules, that barebones approach will not do. Mrs. Catrett was simply not required, given this state of the record, to offer any evidence in response.[9]

In reaching its conclusion, the D.C. Circuit followed the majority interpretation of the Supreme Court's decision in *Adickes v. Kress & Co.*[10] In *Adickes*, the plaintiff, a white schoolteacher in the company of her black students, was refused service in defendant's lunchroom and then was arrested for vagrancy by a local policeman as she left. Plaintiff Adickes alleged a conspiracy between the police officer and the lunch counter attendant to deprive her of her civil rights. The defendant moved for summary judgment on the ground that there was no evidence that the police officer was inside the store with an opportunity to conspire prior to plaintiff's arrest. The Supreme Court affirmed the denial of summary judgment on the ground that the defendant "did not meet its initial burden of establishing the absence of a policeman in the store."[11]

The D.C. Circuit, along with the majority of other circuit courts,[12] interpreted this language from *Adickes* to mean that a defendant moving for summary judgment had to prove, by affidavit or otherwise, the nonexistence of a material fact. Given this interpretation of *Adickes*, the D.C. Circuit held in *Celotex I* that the defendant could not simply point to the insufficiency of plaintiff's responses to the propounded interrogatories, but must also prove that plaintiff's husband was not exposed to Celotex asbestos products.

"[I]t is not enough to move for summary judgment without supporting the motion in any way or with a conclusory assertion that the plaintiff has no evidence to prove his case."

THE SUPREME COURT'S DECISION IN *CELOTEX CORP. V. CATRETT*: THE DEFENDANT MUST CREATE A RECORD BUT NEED NOT DISPROVE PLAINTIFF'S CASE

In *Celotex II*, the Supreme Court reversed the judgment of the D.C. Circuit in *Celotex I*. Writing for a four-Justice plurality, then-Justice Rehnquist first acknowledged that "[o]f course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admission on file, together with affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact."[13] Justice Rehnquist disagreed, however, with the D.C. Circuit's interpretation of *Adickes*. "Unlike the Court of Appeals, we find no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials *negating* the opponent's claim."[14] Justice Rehnquist then reiterated that in cases such as the one before the Court, where the nonmoving party will have the burden of proof at trial, "a summary judgment motion may properly be made *solely* in reliance on the 'pleadings, depositions, answers to interrogatories, and admissions on file.'"[15] The Court concluded that Celotex had met its burden of production simply by propounding appropriate interrogatory questions and then directing the district court's attention to the plaintiff's answers. This holding, of course, gave rise to Justice Rehnquist's oft-quoted phrase: "the burden on the moving party may be discharged by 'showing' – that is, pointing out to the district court – that there is an absence of evidence in the nonmoving party's case."[16]

THE FIFTH VOTE: THE PLAINTIFF HAS NO OBLIGATION TO CREATE A RECORD TO RESIST SUMMARY JUDGMENT

In his concurring opinion, which provided the majority's fifth vote, Justice White "agree[d] that the movant may rely on depositions, answers to interrogatories, and the like, to demonstrate that the plaintiff has no evidence to prove his case."[17] But, Justice White emphasized,

> *[i]t is not enough to move for summary judgment* without supporting the motion in any way or *with a conclusory assertion that the plaintiff has no evidence to prove his case.*
>
> A plaintiff need not initiate any discovery or reveal his witnesses or evidence unless required to do so under the discovery Rules . . . . [H]e need not depose his witnesses or obtain their affidavits to defeat a motion for summary judgment asserting only that he has failed to produce any support for his case. It is the defendant's task to negate, if he can, the claimed basis for the suit.[19]

Under Justice White's analysis, the nonmoving plaintiff has no obligation to come forward with any evidence in opposition to a motion for summary judgment where the defendant has offered only the conclusory allegation that plaintiff has no evidence. Unless and until the defendant asks, by means of interrogatory or deposition, what evidence the plaintiff has to support her case, the plaintiff is under no obligation to reveal such information, not even to avoid summary judgment.

NO DISAGREEMENT HERE: JUSTICE BRENNAN'S DISSENT

Justice Brennan's dissenting opinion begins by noting his agreement with the Court that a defendant moving for summary judgment need not negate an element of the plaintiff's claim; "[t]he Court clearly rejects the ruling of the Court of Appeals that the defendant must provide affirmative evidence disproving plaintiff's case."[19] Justice Brennan then explains the procedures which survive the Supreme Court's disapproval of *Adickes*:

> If the burden of persuasion at trial would be on the *nonmoving* party, the party moving for summary judgment may satisfy Rule 56's burden of production . . . [by] demonstrat[ing] to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim . . . .
>
> *Plainly a conclusory assertion that the nonmoving party has no evidence is insufficient.* Such a "burden" of production is no burden at all and would simply permit summary judgment procedure to be converted into a tool for harassment. Rather, as the Court confirms, a party who moves for summary judgment on the ground that the nonmoving party has no evidence must affirmatively show the absence of evidence in the record. *This may require the moving party to depose the nonmoving party's witnesses or to establish the inadequacy of the documentary evidence* . . . .
>
> I do not read the Court's opinion to say anything inconsistent with or different than the preceding discussion. My disagreement with the Court concerns the application of these principles to the facts of this case.[20]

"[T]he Court clearly rejects the ruling of the Court of Appeals that the defendant must provide affirmative evidence disproving plaintiff's case."

Considering the substantial confusion that the *Celotex II* decision has generated about a defendant's burden of production when moving for summary judgment, it is interesting to note that the dissenters in *Celotex II* joined unanimously with the majority on two points. First, rejecting dicta in *Adickes*, the entire Court held that defendants moving for summary judgment do not need to prove the absence of a material fact in order to obtain summary judgment. Second, all nine justices also agreed that bare allegations that the plaintiff lacks evidence will not meet the movant's burden under Rule 56; the defendant must be able to point the district court to specific places in the record where the plaintiff was asked to produce evidence – by means of interrogatory, deposition, or requests for admission – and failed to do so. Absent such inquiries on the part of the defendant, however, plaintiffs have no general obligation to divulge their case or create a record with which to subsequently resist summary judgment.

SPARSE AUTHORITY IN UTAH AND THE TENTH CIRCUIT

Despite the importance of the *Celotex II* decision, there are no decisions from Utah and only one decision from the Tenth Circuit analyzing its meaning at any length.[21] Fortunately, this lone Tenth Circuit authority reaches much the same conclusion about the significance of *Celotex II*:

> In *Celotex [II]*, the Court clarified the interpretation of Rule 56(c) in *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970), which placed the burden on the "moving party . . . to show initially the absence of a genuine issue concerning any material fact." [After *Celotex II*] [t]he movant must [only] identify those portions of the "pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits if any" to demonstrate the absence of a genuine issue of material fact . . . . However, *conclusory assertions to aver the absence of evidence remain insufficient to meet this burden.* Otherwise, as Justice Brennan cautioned, summary judgment "[would] be converted into a tool for harassment."[22]

Thus, although interpretation of Utah Rule of Civil Procedure 56(c) remains somewhat open, there should be little question in the Tenth Circuit about the necessary steps a defendant must take to satisfy the burden of production when moving for summary judgment.

CONCLUSION

A word on the practical implications of *Celotex II* is in order. As Justice White's concurring opinion makes clear, without a proper discovery request from the defendant, an absence of evidence in the record may reveal a weakness in the plaintiff's case, or it simply may be reflection of lack of diligence on the part of the defendant; the nonmoving plaintiff has no particular obligation to create a record for review. The *Celotex II* rule exists, then, for a good reason; it requires the moving party to create a record which can quickly and efficiently be examined by the district court when passing on summary judgment.

So before you make your next motion for summary judgment on the ground that the plaintiff has no evidence, check to see if you have met your burden of production. Have you created specific places in the record where the plaintiff has admitted an absence of evidence to which you can direct the court's attention? If not, ask the plaintiff a few pointed questions before you make your motion. Then you can discharge your burden by, in the words of Justice Rehnquist, "'showing' – that is, pointing out to the district court – that there is an absence of evidence in the nonmoving party's case."

[1]*Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1985).

[2]*Id.* at 329.

[3]*Catrett v. Johns-Manville Sales Corp.*, 756 F.2d 181 (D.C. Cir. 1985).

[4]*Catrett V. Johns-Manville Sales Corp.*, 826 F.2d 33 (D.C. Cir. 1987).

[5]*Celotex III*, 826 F.2d at 34.

[6]*Id.*

[7]*Id.* at 34-35.

[8]*Celotex I*, 756 F.2d at 184-85.

[9]*Id.* at 185.

[10]398 U.S. 144 (1970).

[11]*Id.* at 160. In fact, it appears that the Court's affirmance in *Adickes* appears to have been based on the fact that the police officer's presence in the store was the subject of genuine dispute between the parties. *Id.* at 157.

[12]*Celotex II*, 477 U.S. at 322.

[13]*Celotex II*, 477 U.S. at 323 (*quoting* Fed. R. Civ. P. 56(c)).

[14]*Id.* (emphasis in original).

[15]*Id.* at 324 (emphasis added).

[16]*Id.* at 325.

[17]*Id.* at 328 (White J., concurring).

[18]*Id.*

[19]*Id.* at 329 (Brennan, J., dissenting).

[20]*Id.* at 331-32, 334 (emphasis added).

[21]*Windon Third Oil and Gas v. FDIC*, 805 F.2d 342 (10th Cir. 1986), *overruled on other grounds.*

[22]*Id.* at 345 & n. 7 (internal citations omitted) (emphasis added).

Should the City be Lead Agency at Superfund Sites? One City's Experience

by. H. Craig Hall

INTRODUCTION

The community that I represent is not atypical from those that you represent: It was settled in the late 1800's. As it developed, thirteen smelters were built and operated within boundaries. These smelters generally were in operation from 1900 through the end of World War II. American Smelting and Refining Company ("ASARCO"), the largest of these smelters, was located exactly in the center of the city. ASARCO was involved in the smelting, refining, and manufacturing of arsenic, lead, and related products. In 1949 operations ceased, leaving approximately 500,000 tons of heavy metal slag. As a result of these operations approximately 150-acres of property ("Murray Smelter") are now contaminated with antimony, arsenic, barium, cadmium, lead, mercury, selenium, silver, thallium, and zinc. The shallow groundwater aquifer may also be contaminated with arsenic. Lead and arsenic were determined to be those substances which exceeded acceptable environmental standards.

Faced with the possibility of becoming a Superfund site – and all the stigma associated with this status – the city decided to take proactive measures not to be at the mercy of federal bureaucracy. Therefore, the city proposed to the EPA that it become the lead agency in charge of the cleanup of this site. The intent was to avoid the National Priorities Listing ("NPL") and have the flexibility of future land development.

In this paper, I will describe the factual setting in which we found ourselves which influenced our decision to become the lead agent. A brief discussion of previous remediation models, along with the reasons for opting out of these models, will follow. Finally, this paper will discuss the importance of involving all interested parties in designing remediation plans and conclude with several recommendations for others who may want to follow our lead.

BACKGROUND

Factual Setting[1]

In 1992, the EPA and its counterpart in Utah, Utah Department of Environmental Quality ("UDEQ"), conducted the Salt Lake valley-wide smelter study. The purpose of the study was to evaluate the scope and breadth of the possible problems with the past smelter operations. In January 1994, the EPA proposed Murray Smelter to be placed on the NPL.

For political and public stigma reasons, the Mayor and the members of the City Council determined that a formal listing on the NPL was to be avoided if at all possible. This was especially prominent after viewing a neighboring city's experience with a similar experience: the Sharon Steel Superfund Site. Similar to ASARCO, Sharon Steel began operations in the first part of this century and closed smelting operations in 1958 and entirely in 1971. The operation produced 10 million tons of tailings. In 1982, after complaints by neighbors of windblown tailings, UDEQ and U.S. Geological Survey discovered high concentrates of lead, arsenic, cadmium, and zinc in the soil and groundwater. In 1990, the site was placed on the NPL. Throughout the next several years, the EPA completely excavated soil from 593 neighboring residential properties and disposed of the contaminated soil at the mine site. Then this entire site was "capped" to cover the tailings – it was the largest capping project in all of North America. Midvale City, the local government, became the lightning rod for citizen complaints, yet it was powerless to do anything because the EPA was the lead agent. City officials had no ability to get things moving and neither the EPA nor Sharon Steel really knew nor cared about the future development of the site. The moral of the story: either way the city will be dragged into the mess; therefore, if you have the opportunity to get involved and become an actor, do it.

Murray City did not want to wait for the federal government to decide what to do with the largest remaining piece of undeveloped land in the city. Additionally, the political atmosphere was

Craig Hall was recently appointed as the city attorney for the City of South Salt Lake. He served as the Murray City Attorney for over twenty years. He is a graduate of Baylor University School of Law (J.D. 1975) and Brigham Young University (B.A.). His practice is concentrated in the area of municipal and environmental law.

optimum to have the city take the role of lead agent: (1) EPA had a miserable track record in cleaning up similar sites in the Salt Lake area – in particular Sharon Steel. (2) UDEQ was overloaded with work and understaffed. And (3) ASARCO, the principal responsible party ("PRP"), was very willing to participate in the cleanup – most importantly, it was willing to pay the costs of remediation, including anticipated costs to be incurred by the city, such as engineering. Thus, Murray City went to the EPA and UDEQ and asked if it could take the lead on the cleanup project and decide what was to be done.

This was a new experience for all parties involved. As Jack DeMann, the executive assistant to the mayor, commented: "We were the new kids on the block . . . . This had never been done before, and they weren't certain what our motives were. We told them we don't want to white wash it, but find out if there is a problem and then deal with it."[2] The EPA accepted our proposal and we became the lead agency.

Previous Models of Remediation

Traditionally, EPA had utilized two different models or methodologies in remediating various Superfund sites throughout the country. These models could be described as follows:

Model #1: Locate the PRPs and force them through legal means to cleanup the various sites from contamination.

Model #2: EPA performs the cleanup. Once the cleanup is finished, the EPA then seeks out the PRPs for reimbursement of monies expended.

However, there are many problems with either model. Model #1 encouraged PRPs to fight an intensive litigation battle and drag out litigation by bringing in other potentially liable parties to ameliorate the individual expense of the cleanup. Besides the delay and legal wrangling, little was accomplished by way of cleanup until the courts determined who was responsible for the contamination. Model #2 does encourage a rapid cleanup of the contaminated site, however, it discourages property owner participation in remedy selection. Remediation costs tend to be higher and many Brownfields[3] are created as a result of little or no input from local governments. Risk to the public is eliminated but vacant and non-productive properties plague the surroundings.

In lieu of utilizing either of these two models, Murray City approached the EPA and UDEQ with the idea that the city, a local unit of government, act as the lead agency in this project. The EPQ and UDEQ would serve in roles of scientific and technical support. It was understood that the EPA could not delegate away its enforcement or similar responsibilities. However, the threat of their heavy hammer of enforcement would not be readily visible. On April 23, 1996, Murray City and the EPA entered into a Memorandum of Understanding in which Murray City became the lead agency.

"During the initial Engineering Evaluation Cost Analysis ("EE/CA"), it became apparent that the involvement of the property owners was critical to the success of this project. The property owners became willing participants in the process. Most were represented by environmental counsel with extensive experience."

THE MURRAY SMELTER EXPERIENCE: CITY AS LEAD AGENCY

Goals and Roles of Various Actors

Murray City initially established three distinct goals that it wanted to achieve as the lead agent. These goals were:

- A thorough cleanup of the contamination located on the property – the risk to the environment and to the health of the public had to be eliminated.
- The remediation process must be expedited – eternal studies of options had to be eliminated.
- The cleanup must be accomplished in such a manner that, when completed, would leave the property ready to become a vibrant commercial center for the city.

During the initial Engineering Evaluation Cost Analysis ("EE/CA"), it became apparent that the involvement of the property owners was critical to the success of this project. The property owners became willing participants in the process. Most were represented by environmental counsel with extensive experience. The property owners' wanted to avoid having to participate financially in the cost of the litigation and, once the plan was completed, wanted the property to be commercially developed without extensive governmental regulations. They concurred that the creation of a new 150-acre Brownfield needed to be avoided.

Each actor played an important part in developing a remediation plan, cleaning up the site, and eventually returning this parcel of land into commercially viable real estate. Attached to this paper (see appendix) is a rough schematic chart which outlines the roles each of these actors has played in the process.

The EPA played the role of overseer and negotiator of consent decrees with PRPs. The city played the role of institutor of institutional controls and inspector. The main PRP, ASARCO, would perform the remediation and reimburse the city for engineering costs incurred for review and technical advice. Finally, the local property owners provided important input into potential remedies to restore the site into commercially viable land.

The city's job as lead agency was to coordinate these actors in such a way that all worked in mutually harmonious ways. Through involving all the interested parties in designing a remediation plan, we have been able to meet all three of the goals we wanted to achieve. This achievement could only come from a lead agency who has the local understanding and investiture to streamline a flexible cleanup process which will produce commercially viable real estate in the end, i.e., the city.

Where Are We Today?

The proposed remediation plan has been released to the public for formal comment. The comment period ended in October 1997. It appears that the preferred alternative will be to excavate and remove the Category I materials, bury in the road repository the Category II materials, and Category III and IV materials will be used to create landscaped areas contained in barriers. Recently, a developer has obtained options to purchase the entire smelter site. This has created a new synergism on the site. Present property owners, whose users are primarily industrial in nature, have agreed to sell their property and to relocate their businesses to more appropriate locations.

The proposed consent decree provides an incentive for these property owners to sell and move. The EPA is now offering to developers such as ours, a "prospective purchaser agreement" ("PPA"). These agreements will protect future landowners from any past environmental liability provided that they comply with the institutional controls. Present property owners will be relieved from past responsibility provided that ASARCO completes the proposed remediation plan.

CONCLUSION AND RECOMMENDATIONS

The proposed remediation effort will begin in Spring of 1998. The developer will follow behind ASARCO. So, was it worth the effort? Cleanup of the site will be completed within 27 months and approximately 100-acres of prime commercial property will not fall into the "Brownfield Plight."

Do not be afraid to challenge the way EPA has done business in the past. However, you must respect its statutory mandates. Stay within the framework of RCRA and CERCLA, but be creative in your approaches.

Most important, involve the citizens and property owners in the process. They can be your best advocates once they understand what the process is.

Copies of any documents prepared and used in this process can be obtained from our office if desired. Feel free to call me at (801) 483-6070, write to City of South Salt Lake, City Attorney's Office, 220 East Morris Avenue, South Salt Lake City, UT 84115-3284, or contact me by e-mail at *hcall@email.state.ut.us.*

[1]Factual information for this section comes from the EPA Region 8 Utah Fact Sheets web page at *http://www.epa.gov/region08/html/r8fct_ut.htm.*

[2]Darren Tucker, "Murray dodges Superfund bullet", 12 *Murray Eagle* 44, Nov. 9, 1995, at 3 (quoting Jack DeMann, executive assistant to the mayor).

[3]"Brownfields" is the term generally associated with land which is not sufficiently contaminated to be on the National Priorities List but does contain sufficient environmental contamination to deter redevelopment because of fears of environmental liability. The end result is vacant, non-productive real estate.

Appendix

Responsibilities of Various Actors in Cleanup Process

Actor	Responsibilities
EPA	1. Oversee the EE/CA, including assuring that exploration and testing for contamination was accomplished according to good scientific methods. 2. Participate in the negotiation with property owners regarding proposed alternative remediation plans. 3. Negotiate the consent decree (C-D) with the PRP and other settling defendants and obtain court approval of the plan. 4. Conduct public forum meetings with property owners and interested parties in City Hall. The purpose of these meetings was to keep the public informed as to the process, the potential risks and probable methods to be used in the cleanup of the site.
Murray City	1. Change the Master Plan to re-zone the property to commercial uses. 2. Agree to implement long term institutional controls regarding uses on the property. 3. Agree to perform regular and periodic inspections to insure that the institutional controls are being adhered to.
ASARCO	1. Perform the remediation. 2. Reimburse the City for engineering costs incurred for review and technical advice. 3. Reimburse the City for costs incurred in the enforcement of institutional controls.
Property Owners	1. Participate in meetings to give input as to potential remedies. This responsibility included participating in discussions regarding a potential new major collector road. Discussion regarding the future zoning of the property was a major topic. The zoning classification of the property dictated in large measure the extent of the necessary cleanup.

Discipline Corner

DISBARMENT

On March 30, 1998, the Honorable J. Dennis Frederick, Third Judicial District Court, entered a Judgment of Disbarment, disbarring Mark R. Madsen from the practice of law for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4 (Misconduct) of the Rules of Professional Conduct. Madsen was also ordered to submit to binding fee arbitration on any fee disputes or claims arising from any other matters abandoned by him, cooperate in resolving any further complaints, attend the Utah State Bar Ethics School, and pay restitution to the Client Security Fund for any amount(s) paid to his clients as a result of professional misconduct. The Order was based on a Discipline By Consent and Settlement Agreement entered into by Madsen and the Office of Professional Conduct.

In January 1997, Madsen abandoned his law practice. Because of Madsen's abandonment of his law practice, the Bar was forced to seek the imposition of a trusteeship over Madsen's practice for the purpose of contacting Madsen's clients, advising them to seek substitute counsel, and distributing the files. Madsen misappropriated client funds totaling approximately $165,000 for his own use and benefit.

INTERIM SUSPENSION

On March 9, 1998, the Honorable Guy R. Burningham, Fourth Judicial District Court, entered on Order of Interim Suspension, suspending Mark K. Stringer from the practice of law on an interim basis effective March 1, 1998. The Order was based on a Stipulation to Interim Suspension entered into by Stringer and the Office of Professional Conduct. Stringer will remain on interim suspension until the conclusion of disciplinary proceedings.

The Office of Professional Conduct has received several informal complaints alleging numerous instances of professional misconduct on Stringer's part. If proved by a preponderance of the evidence, the allegations raised in these informal complaints constitute numerous serious violations of the Rules of Professional Conduct, including: Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation), Rule 1.3 (Diligence), Rule 1.4(a) and (b) (Communication), Rule 1.5(a) (Fees), Rule 1.7(b) (Conflict of Interest: General Rule), Rule 1.15(a), (b), (c) (Safekeeping Property), Rule 1.16(a), (d) (Declining or Terminating Representation), Rule 3.1 (Meritorious Claims and Contentions), Rule 3.2 (Expediting Litigation), Rule 3.4(c) (Fairness to Opposing Party and Counsel), Rule 3.5(d) (Impartiality and Decorum of the Tribunal), Rule 4.2 (Communication With Person Represented By Counsel), Rule 4.4 (Respect for Rights of Third Persons), Rule 7.5(d) (Firm Names and Letterheads), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(a), (c), (d) (Misconduct).

ADMONITION

On February 20, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.8(a) (Conflict of Interest: Prohibited Transactions) of the Rules of Professional Conduct.

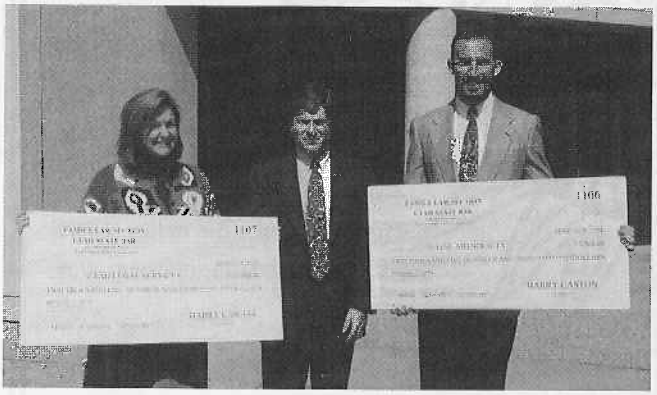
On November 18, 1991, the attorney negotiated a business relationship with a client, her spouse, and their company that gave the attorney's law firm an equity position of five percent of the outstanding stock, along with an exclusive and irrevocable license to develop, manufacture, and market certain patent technologies in Mexico and Latin America. The fee agreement between the attorney's law firm and the clients included a provision whereby the clients would retain the attorney's law firm's legal services for not less than twenty years. The clients claimed that the business relationship with the attorney's law firm was negotiated without the attorney's recommending that they seek independent counsel before entering into the agreement. The attorney has denied this claim. The attorney produced a letter from his law firm to the clients dated November 11, 1991, that directed the clients to review the fee agreement with independent counsel "to make sure that it is fair and that there are no problems with it . . . ." The fee agreement between the attorney's law firm and the clients contained no disclosures similar to those contained in the letter dated November 11, 1991. The client denied receiving the letter dated November 11, 1991, from the attorney's law firm.

THANK YOU

In the last year, the Office of Professional Conduct requested pro-bono assistance from paralegals to review more than 150

boxes of client files in connection with the trusteeship imposed over an abandoned law practice. Many people volunteered and the OPC would like to thank them. Their assistance allowed this office to return a vast number of the client files. The OPC would like to extend a special thanks to Mary Mark and the Salt Lake Community College Paralegal Studies Program for their assistance in reviewing more than 100 of the boxes.

Legal Aid Society Receives $2,500 from the Family Law Section of the Utah State Bar



L-R: Anne Milne, Executive Director of Utah Legal Services; Harry Caston, Chairman, Family Law Section; Stewart Ralphs, Executive Director of Legal Aid Society

The Family Law Section of the Utah State Bar generously donated $2,500 to Legal Aid Society of Salt Lake.

"The $2,500 donation from the Family Law Section means a great deal to us" states Executive Director, Stewart Ralphs. "It's nice to know that our own section of the Bar appreciates and contributes to what we do."

A formal check presentation was made to Legal Aid Society on March 18, 1998 at the last Family Law Section meeting.

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.

1998-99 Licensing Forms

The 1998-99 licensing renewal forms will be mailed during the first week in June. Please note the return address on the printed form. **If you have not received your form by June 15 contact the Bar immediately.**

License fees are due regardless of whether you receive a form. Any Client Security Fund assessment must be paid with your license fees. Payments received without the Client Security Fund assessment will not be processed.

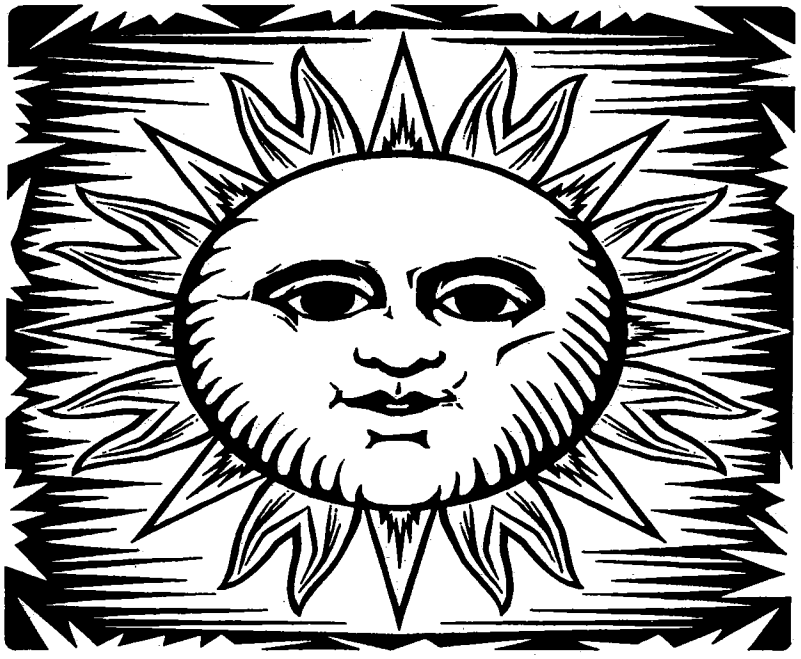
License fees are due July 1, 1998. Payments will be accepted through July 31, 1998 without a late fee. A late fee of $50 will be assessed if your payment is not ***received*** by 5:00 p.m., July 31, 1998. Payments received without the late fee will not be processed until the late fee is paid.

If your license fees and any other assessments are not ***received*** by 5:00 p.m., August 31, 1998 you will be suspended for non-payment of fees. A reinstatement fee of $100 will be assessed to those who have been suspended and wish to reinstate their license.

Due to the volume of forms to be processed you need to allow two-three weeks for processing. This is important to those that need to serve clients in the jails and prison since you are required to have an active sticker to enter the facilities.

If you are aware of an attorney who has moved and has not changed his or her address with the Bar of if you have not changed your address with the Bar, please do so now. Changes must be made *in writing* and should be submitted to Arnold Birrell. The fact you have moved and not changed your address with the Bar or notified another department of the Bar either in writing or verbally will not relieve you from late fees and/or suspension.

Mark your calendars now . . .



for the 1998 Utah State Bar
Annual Meeting!
July 1 - July 4, 1998
Sun Valley, Idaho

We hope to see you this summer!

And don't miss the opportunity
to watch our team of judges play
hard-ball with our team of lawyers in
the first-ever "Judges vs. Lawyers"
softball game on Thursday, July 2 at 5:00 p.m.
Bring your families and cheer for your favorite team!

Request for Comment on Proposed Bar Budget

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 1998 and ends June 30, 1999. The process being followed includes review by the Commission's Executive Committee and the Bar's Budget & Finance Committee, prior to adoption of the final budget by the Bar Commission at its July 1, 1998 meeting.

The Commission is interested in assuring that the process includes as much feedback by as many members as possible. A copy of the proposed budget, in its most current permutation, will be available for inspection and comment at the Law & Justice Center after May 30, 1998. You may pick up a copy from the receptionist.

Please call or write John Baldwin at the Bar office with your questions or comments.

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 $20.00. Sixty-nine opinions were approved by the Board of Bar Commissioners between January 1, 1988 and January 23, 1998. For an additional $10.00 ($30.00 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	_____ ($20.00 each set)
_____	Ethics Opinions/ Subscription list	_____ ($30.00 both)

Please make all check 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.

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.

New Services Improve Access to Court Information

The Utah State Courts are combining old and new technologies to improve communication with the court community and the general public. For people looking for general court information, the State Courts have developed a Web site. For people seeking answers to specific questions, a dedicated telephone line has been staffed to provide a central contact point for the court system.

The Court Information Line is a "low tech" response to the need to facilitate public access to information. It was introduced in January as a one-year pilot program. The Line is a toll free telephone number that is answered during business hours. The availability of the Line is advertised in each state court building.

The Court Information Line is designed to address questions raised by court users. These questions include requests for information, explanation of court processes, complaints about the courts, and referrals to appropriate organizations. The Court Information Line seeks to be a link between the caller and the resources of the courts. By creating this program, the State Courts hope to increase their responsiveness to members of the public. In addition, the nature of the calls is tracked to identify systemic problems that can be addressed administratively. Early experience indicates that the numbers of requests for information greatly exceed complaints.

Another component of the customer service outreach efforts undertaken by the courts is its web site. The site was introduced in November of 1997 and now averages over 500 visits per week. The intent of this new information resource is to take as much of the mystique out of the court process as possible for those willing to invest the time.

The site provides general information about the courts, including a section which outlines the territorial and subject matter jurisdictions of all courts in the state. Questions and answers about jury service, a glossary of legal terms, and information on landlord-tenant, divorce, small claims, and other types of cases commonly filed by pro se litigants is included. The site also features an e-mail address for court patrons in need of additional information. Currently, 5-7 requests for information are processed weekly through this service.

Information on the courts' web site which may be of particular interest to bar members includes:

- amendments to court rules;
- appellate opinions which are posted within 48 hours of release;
- an online version of the Roster of Trained Mediators and Arbitrators provided by the Court-Annexed Alternative Dispute Resolution program;
- court-prepared or related reports including the Family Court Task Force Report and the results of a survey of drug and alcohol use among juvenile probationers; and
- documentation and instructions for electronically accessing court information through the XChange subscription service.

Court Information Line: within Salt Lake County: 578-3942; elsewhere 1-888-640-2687

For more comments or questions, contact Peggy Gentles 801-578-3819

Utah State Courts' web site: http://courtlink.utcourts.gov

For comments or questions, contact Kim Allard at 801-578-3988

Notice of Availability of Client Security Fund Task Force Report

On September 14, 1996, the Utah State Bar Commission created a Client Security Fund Task Force to study the purpose and procedures of the Fund program and to evaluate the benefits of the program for the Bar and the public. The Task Force was composed of Commissioners Charles R. Brown, who was the Task Force Chair, Scott Daniels, Denise A. Dragoo, John Florez, Francis M. Wikstrom, David R. Hamilton, who is the Chair of the Bar's Security Fund Committee, and Carol A. Stewart, Deputy Senior Counsel in the Bar's Office of Professional Conduct.

In May, 1997, the Client Security Fund Task Force presented its report and recommendations to the Bar Commission. The Bar Commission is soliciting comments to the report from members of the Bar. The report may be found at the Bar's Website at ***www.utahbar.org*** and copies are available for pick up or may be mailed from the receptionist at the Bar Offices. All comments should be addressed to the Bar Commission, c/o Executive Director John C. Baldwin, 645 South 200 East, Salt Lake City, UT 84111 or may be emailed c/o ***jbaldwin@utahbar.org***. Comments must be received on or before June 1, 1998.

Utah Rules of Professional Conduct
Public Service
Proposed Rule 6.1 Pro Bono ~~Publico~~ Legal Service

Voluntary Pro Bono Service

A lawyer should render public interest legal service. ~~A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.~~ This Rule sets forth three components:

(a) The Rule establishes the professional responsibility for lawyers to provide pro bono legal services. This service is not mandatory, but aspirational in nature.

(b) The Rule provides guidelines for what constitutes pro bono legal services.

(c) The Rule establishes mandatory reporting of pro bono legal services. All lawyers are required to report annually the amount of pro bono legal services they have provided.

(a) Professional Responsibility. Lawyers have a professional responsibility to provide pro bono legal services. The professional responsibility established under this Rule is aspirational rather than mandatory in nature. The failure to fulfill one's professional responsibility under this Rule will not subject a lawyer to discipline. The professional responsibility to provide pro bono legal services may be discharged by:

(1) annually providing at least 36 hours of pro bono legal services; or

(2) making an annual contribution of at least $10 per hour for each hour not provided under (a)(1) above (e.g. 36 hours * $10.00 = $360.00) to an agency which provides direct services as defined in (b) below.

(b) Guidelines on Providing Pro Bono Legal Services:

In fulling this responsibility, the lawyer should:

(1) provide a majority of the 36 hours of pro bono legal services without fee or expectation of fee to:

(i) persons of limited means; or

(ii) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(2) provide any additional services through:

(i) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate;

(ii) delivery of legal services at a substantially reduced fee to persons of limited means; or

(iii) participation in activities for improving the law, the legal system or the legal profession.

(c) Reporting Requirement. Each active member shall annually report to the Utah State Bar whether the member has satisfied the member's professional responsibility to provide pro bono legal services. Out-of-state members of the bar may fulfill their professional responsibility in the states in which they practice or reside. For purposes of this Rule, a reporting year shall mean the just completed licensing year. The licensing period runs from July 1 through June 30. Each member shall report this information through a simplified reporting form that is made a part of the member's annual dues statement. The form will contain the following categories from which each member will be allowed to choose in reporting whether the member has provided pro bono legal services:

(1) I have personally provided _____ hours of pro bono legal services during this past reporting year.

(2) (i) I hereby submit $ _____ for the Utah Access to Justice Foundation in meeting my obligation, or

(ii) I have contributed $ _____. (Only contributions to organizations which provide direct services as defined in (b) above qualify);

(3) I am carrying forward into this reporting year _____ hours of pro bono legal services from the previous reporting year.

Reporting a zero amount in both 1 and 2 above meets the reporting requirement of this Rule. The failure to report this information shall not constitute a disciplinary offense under this rule. Annual dues statements submitted without the reporting information will be treated as incomplete and incomplete dues statements will be rejected. Licensing for that year will not be

processed until the reporting information is complete.

COMMENT

~~The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas; poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This Rule expresses that policy but is not intended to be enforced through the disciplinary process.~~

~~The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well to do.~~

~~The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal service to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.~~

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to persons of limited means. The Utah State Bar urges all lawyers to provide 36 hours of *pro bono* legal services annually. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified of 36 hours, but during the course of a legal career, each lawyer should aspire to render on average per year, the number of hours set forth in this Rule. Services can be performed in civil, administrative, criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (b)(1)(i) and (ii) recognize the critical need for legal service that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, corporate counsel, judges and others, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under the paragraphs (b)(1)(i) and (ii) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. Lawyers providing *pro bono* legal services on their own need not undertake an investigation to determine client eligibility. Rather, a good faith determination by the lawyer of client eligibility is sufficient. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service should be provided without fee or expectation of fee or with a substantially reduced fee, the *intent* of the lawyer to render free or reduced fee legal services is essential for the work performed to fall within the meaning of paragraphs (b)(1) (i) and (ii). Accordingly, services rendered cannot be considered *pro bono* if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted as *pro bono* would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means. It is recognized that some *pro bono* services provided to individuals slightly above program income guidelines may be provided at significantly reduced fees, based on the resources of the individuals.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform *pro bono* services exclusively through activities described in paragraphs (b)(1))i) and (ii), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b)(2). Constitutional, statutory or regula-

tory restrictions may prohibit or impede government and public sector lawyers and judges from performing *pro bono* services outlined in paragraphs (b)(1)(i) and (ii). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their *pro bono* responsibility by performing services outlined in paragraph (b)(2).

[6] Paragraph (b)(2)(i) includes the provision of certain types of *pro bono* legal services to those whose incomes and financial resources place them above limited means. It also permits the *pro bono* lawyers to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2)(ii) covers instances in which lawyers agree to and receive a modest fee for furnishing *pro bono* legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(2)(iii) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on board of *pro bono* or legal services programs, taking part in Law Day activities, taking part in law related education activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that may fall within this paragraph.

[9] Because the provision of *pro bono* legal services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in *pro bono* services. At such times a lawyer may discharge the *pro bono* responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the *pro bono* responsibility collectively, as by a firm's aggregate *pro bono* activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct *pro bono* services or making financial contributions when providing *pro bono* legal services is not feasible.

[11] Paragraph (b)(1) recognizes the pressing need for legal services to be provided to persons of limited means without fee or expectation of fee. That type of service is a greater priority than services rendered at a reduced fee to those same persons. For the majority of Utah's practitioners, this preference for "no-fee" service is reasonable. However, a substantial number of Utah's lawyers practice in communities in which (or with clientele for whom) the cost of living is high and wages are low. For example, Utah's rural counties have average wages ranging from 60% to 80% of the Salt Lake County norm, while cost of living is from 90% to over 100% of the national norm. The same is true of some Wasatch Front communities. These lawyers may have a practice which consists generally of rendering services at reduced fees to persons of limited means. The general preference of "no-fee" service may not apply to these lawyers in the same manner as to lawyers who rarely render such service.

[12] While the personal involvement of each lawyer in the provision of *pro bono* legal services is generally preferable, such personal involvement may not always be possible or produce the ultimate desired result, that is, a significant maximum increase in the quantity and quality of *pro bono* legal services provided. The annual contribution alternative recognizes a lawyer's professional responsibility to provide financial assistance to increase and improve the delivery of *pro bono* legal services when a lawyer cannot or decides not to provide *pro bono* legal services through the contribution of time. Also, there is no prohibition against a lawyer contributing a combination of hours and financial support.

[13] The reporting requirement is designed to provide a sound basis for evaluating the results achieved by this Rule and to remind lawyers of their professional responsibility under this Rule. In meeting this reporting requirement, lawyers must report the number of hours provided in the preceding reporting year in section (c)(1). A reporting year is the just completed, or the about to be completed, licensing year for the lawyer. Therefore a lawyer submitting a report for the licensing year starting July 1 of a given year, would report *pro bono* activities or contributions for the preceding July 1 through June 30.

[14] For section (c)(2), a lawyer must report amounts contributed to appropriate organizations in section (i) *or* section (ii) of (c)(2). A lawyer may report in both (i) and (ii), but must report in at least one of the two. Appropriate organizations

are those organizations which provide *pro bono* legal services, as described in section (b) of the Rule. The intent of this Rule is to direct resources towards providing representation for persons of limited means. Therefore, only contributions made to these described organizations should be reported.

[15] The 36-hour standard for the provision of *pro bono* legal services is a minimum. Additional hours of service are to be encouraged. Many lawyers will, as they have before the adoption of this Rule, contribute many more hours than the minimum. To ensure that a lawyer is recognized for the time required to handle a particularly involved matter, this Rule provides that a lawyer may carry forward, into the next reporting year, any time expended in excess of 36 hours in any one reporting year. Lawyers may only carry forward hours from the immediate preceding reporting year. Hours carried forward may be reported in section (c)(iii). However, a lawyer does not have to complete section (c)(iii) to comply with the reporting requirement of this Rule.

[16] If a lawyer submits his or her annual dues statement without reporting the required information in sections (c)(i) and (c)(ii), the lawyer's dues statement for that year will be incomplete. Incomplete statements will be returned to the lawyer and the lawyer's licensing for that year will not be processed until the dues statement is complete. Lawyers in this category may be suspended from practicing law for non-compliance.

[17] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process. Suspended attorneys, however, may not engage in the practice of law. Lawyers who do so may be subject to attorney discipline for violation of Rule 5.5 as well as other applicable rules.

[18] Reporting records for individual attorneys will not be kept or released by the Utah State Bar. The Utah State Bar will gather useful statistical information at the close of each reporting cycle and then purge individual reporting statistics from its database. The general statistical information will be maintained by the Bar for year-to year comparisons and may be released, at the Bar's discretion, to appropriate organizations and individuals for furthering access to justice in Utah.

CODE COMPARISON

There was no counterpart of this rule in the Disciplinary Rules of the Code. EC 2-25 stated that the "basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyers . . . Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged." EC 8-9 stated that "[t]he advancement of our legal system is of vital importance in maintaining the rule of law . . . [and] lawyers should encourage, and should aid in making, needed changes and improvements." EC 8-3 stated that "[t]hose persons unable to pay for legal services should be provided needed services."

Request for Comments on Proposed Amendments to Rule 6.1 of the Rules for Lawyer Discipline and Disibility Governing Pro Bono Service

The Utah Bar Commission petitioned the Utah Supreme Court on February 6, 1998 to amend Rule 6.1 of the Rules of Professional Conduct Governing Pro Bono Public Service. As part of the petition, the Bar Commission requested that the Court provide for a notice and comment period. On April 7, 1998, the Utah Supreme Court approved immediate distribution of the proposed amendments and provided for a 45-day comment period in which Bar members may comment on the proposed amendments.

The proposed amended rule was printed and distributed in the April *Utah Bar Journal* and is reprinted in the May *Utah Bar Journal*. The petition and proposed rule may be found at the Bar's website @ ***www.utahbar.org*** and copies of the petition and proposed rule are available for pick up or may be mailed from the receptionist at the Bar Offices.

All comments should be addressed to the Bar Commission c/o Executive Director John C. Baldwin at 645 South 200 East, Salt Lake City, Utah 84111 or may be e-mailed c/o ***jbaldwin@utahbar.org***. Comments must be received on or before June 1, 1998. On or before June 21, 1998, the Bar Commission will deliver all comments to the Utah Supreme Court along with the Bar Commission's response to the comments.

Do you have expertise in Administrative Law? Attorneys needed to help prepare and grade the bar examination questions twice a year for the Utah State Bar. If you are interested, please call Darla Murphy at 297-7026.

Notice of Availability of Licensing of Legal Assistants Committee Report

In April, 1996, the Utah State Bar Commission approved the creation of a Legal Assistant Division to coordinate the activities of legal assistants in the state. Membership in the Division is voluntary and open to legal assistants who are supervised by members of the Bar. The Bar Commission requested the Division to study the concept of legal assistant licensing and to prepare a model to be considered by the Bar for implementation.

On April 6, 1998, the Licensing of Legal Assistants Committee of the Legal Assistants Division of the Bar issued its report. The Bar Commission is soliciting comments on the report from members of the Bar and the Division. The report may be found at the Bar's website at ***www.utahbar.org*** and copies are available for pick up or may be mailed from the receptionist at the Bar offices. All comments should be addressed to the Bar Commission, c/o Executive Director John C. Baldwin, 645 South 200 East, Salt Lake City, UT 84111 or may be emailed c/o ***jbaldwin@utahbar.org***. Comments must be received on or before June 1, 1998.

Litigation Section's Trial Academy 1998 Part Three: "Fact Witnesses"

This biennial program of demonstration and lectures by a state and federal judge and two team of experienced attorneys is considered by many to the the most useful litigation CLE offered in the state.

Wednesday, May 27, 1998
6:00 to 8:00 p.m.
Utah Law & Justice Center
(Registration at 5:30)

The third session of the six-part Trial Academy will be held on May 27th at the Utah Law & Justice Center. The subject will be "Fact Witnesses" and the faculty will lecture and demonstrate the proper techniques for a variety of issues confronting the litigator in the examination of witnesses:

- Effective use of depositions at trial
- Witness control and over-control
- The evidence foundations that you must know
- Are there really "rules" of cross examination?
- Killer impeachment on inconsistent statements
- Pretrial tactics to minimize evidence problems
- Cross examining the hostile witness
- Handling the fragile witness
- Why "cross" examination isn't "angry" examination
- And much more . . .

Our faculty for this session will include Richard Burbidge (Burbidge & Mitchell), David Jordan (Stoel Rives), Alan L. Sullivan (Snell & Wilmer), Judge Pat B. Brian, as well as a federal judge. As usual, Frank Carney (Suitter Axland) will lead the program. It is not necessary to have attended the first two session of the Trial Academy in order to fully benefit from the program.

Two hours of CLE credit will be granted. (The program qualifies for NLCLE credit for new members) The cost is $25 for Litigation Section members and $35 for non-members. Pre-registration is strongly recommended. To register, please send your payment to UTAH STATE BAR, CLE DEPT., 645 SOUTH 200 EAST, #310, SLC, UT, 84111 or call Monica Jergensen, CLE Administrator, at 297-7024.

FIRST ANNUAL SALT LAKE COUNTY BAR ASSOCIATION GOLF TOURNAMENT AND FUND RAISER

DATE: Friday, MAY 22, 1998

PLACE: OLD MILL GOLF COURSE
6080 SOUTH WASATCH BLVD.

TIME: 7:00 a.m., Shot Gun Start, Scramble Format

COST: $75.00 Per Player, includes greens fees for 18 holes, cart, tournament fee, lunch, and prizes.

SIGN-UP: Send a check for $75.00 per player (made out to "Salt Lake County Bar Association") to Liz King, Utah Attorney General's Office, 160 East 300 South, Sixth Floor, Salt Lake City, Utah 84114-0856. Note on the check or envelope that payment is for the Salt Lake County Bar Asso. Golf Tournament and Fund Raiser. If you have a preference regarding pairings please so note. Anyone can enter, but registration is limited to the first 144 who sign up.

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Mandatory Pro Bono Reporting: A Step in the Right Direction

by Jensie L. Anderson

The February 1998 *Utah Bar Journal* published an article entitled "Dear Access to Justice Task Force" addressing the Access to Justice Task Force's mandatory *pro bono* reporting recommendation. The article, written by Gary G. Sackett and endorsed by sixteen other members of the Questar Legal Department, served as "a representative of the many individuals and firms that are opposed to mandatory *pro bono* reporting." I read the article with interest, and quite frankly, surprise, as many of its ideas were outside my realm of thinking. Of particular interest were the concepts that the need for *pro bono* services might not really exist, and that only certain types of lawyers are competent to provide *pro bono* services. When asked to respond to the article, I found myself at a loss at how to best address Mr. Sackett's concerns without offending those opposed to the recommendation. What follows is my attempt to do so.

At first glance, I, too, was thoroughly unimpressed by the Task Force's recommendation that attorneys be required to report their *pro bono* hours, although my reasons for disdain were quite different than Mr. Sackett's and other attorneys who oppose the proposal. I did not see it as an "artificial, coercive device designed to pressure lawyers to provide *pro bono* services beyond their inclination otherwise to do so." Rather, I saw it as a insignificant attempt to solve a formidable and far-reaching problem. I saw it as a silly compromise designed to pacify those of us who believe that *pro bono* service should be mandatory and to create a sense of responsibility in those who believe that *pro bono* is an unnecessary waste of time, or a job better left to legal service attorneys. I did not believe that it would create a conscience in individual lawyers where no conscience existed already. I did not believe that a mandatory reporting of *pro bono* hours would have any effect whatsoever when those reporting "zero" would face absolutely no consequence.

However, after much thought, and after putting aside my rather strident views of the issue, I realized that the Task Force's recommendation was a solid one. While it is certainly not a solution to the problem, it is a significant step in the right direction. The Utah Rules of Professional Conduct[1] provide a suggestion that *pro bono* service is a responsibility of all members of the Utah State Bar. It is, however, a rule without teeth, and a rule which is often ignored. It does not require attorneys to participate in public interest activities, nor does it provide any sanction if individual attorneys choose to ignore their ethical responsibility to use their special skills to assist those less fortunate. The Task Force's recommendation does not strengthen the ethical rule in any way, shape or form nor is it, as Mr. Sackett suggest, a "Big Brother is watching" mechanism which will subject non-compliant attorneys to the ridicule of their peers. It is, at best, an attempt to gauge whether attorneys are choosing to voluntarily heed the ethical mandate to participate in public interest service. At worst, it is a way to "guilt" attorneys into doing what is morally and ethically right. And quite honestly, if mandatory *pro bono* reporting coerces even one attorney into providing *pro bono* service where he or she otherwise would

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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.

not have, it is a fine recommendation.

That said, I am obligated to address Mr. Sackett's primary arguments against the Task Force's recommendation; namely, that there may not actually be a need for increased *pro bono* service and that only certain lawyers are competent to provide public interest service. Both arguments are without merit and will simply be used as excuses by attorneys who do not believe that they have an ethical obligation to participate in *pro bono* service.

THE NEED

The recurrent theme of Mr. Sackett's article is that there is no shortage of attorneys ready to provide *pro bono* services to Utahns; that there is actually a shortage of *pro bono* opportunities. Indeed, Mr. Sackett suggests that a recent call for volunteer attorneys produced an "abundance of volunteers" who were never called to participate in the programs for which they volunteered. I certainly cannot prove that Mr. Sackett's information is not accurate, but I would argue that the need for attorneys willing to participate in *pro bono* service is overwhelming, particularly in light of the congressional gutting of the Legal Services Corporation.

Last year, I was asked to serve on the needs assessment subcommittee of the Access to Justice Task Force. Our assignment was to assess the need for *pro bono* legal service both along the Wasatch Front and throughout the state of Utah. The need was assessed at both 125% and 200% of the federal poverty guideline and in both instances the numbers of those in need were daunting. It immediately became clear that the Utah State Bar could work for years and years and never reach all those with unmet legal needs. Based upon not only this assessment of needs, but also other important issues, the task Force created its recommendations, among them mandatory *pro bono* reporting. Again, although not the ultimate solution to the problem, the Task Force's mandatory *pro bono* reporting recommendation at least recognizes the problem and takes a step toward solution. To argue that no such problem exists ignores not only the well-researched findings of the Task Force, but the obvious and overwhelming shortage of *pro bono* services available to Utahns.

On a much smaller scale, I have had my own personal experience with the need for increased *pro bono* service by members of the bar. As the coordinator of Tuesday Night Bar program, I can assure you that there is indeed a shortage of attorneys willing to donate there time. Tuesday Night Bar is a program which, in the ideal world, requires that six attorneys present themselves at the Law and Justice Center on Tuesday evening from 5:00 p.m. to 7:00 p.m. and offer free legal assistance (whether in the form of actual advice, or in the form of a referral, or simply in the form of a listening ear) to forty citizens who have signed up for the program. It is one of the Bar's longest-standing and best attempts to reach the community, to serve unmet legal needs and to improve the image of lawyers. Unfortunately, it is near impossible to find six attorneys who are willing to donate their time and their expertise on any given Tuesday night. There are a core of incredibly dedicated individuals, but finding others . . . pulling teeth would be a good analogy. Perhaps all of the attorneys who volunteered but were never called in Mr. Sackett's example would be willing to donate a couple of hours to Tuesday Night Bar and that small problem would be solved.

COMPETENCE

I am desperately tired of individuals arguing that they cannot provide *pro bono* service because they are not competent to do so. Apparently, these individuals are under a misconception that there is an area of the law called *pro bono* which like employment law, or patent law, or corporate litigation, is a speciality. *Pro bono* is defined as "for the good; used to describe work or services (e.g. legal services) done or performed free of charge."[2] It is an area of the law which requires a commitment to the community. It requires that an individual complete law school. It requires that the individual passed the bar. It may require a base knowledge of the legal research. Those are the requirements for basic *pro bono* service. Nothing more, nothing less. To suggest that in-house counsel, or transactional lawyers, or any other type of lawyers are excused from the obligation of *pro bono* service because they are not competent to do so is irresponsible.

Pro bono service comes in all forms. It is using your special area of expertise to help someone who may not otherwise have access to the justice system. It is donating your time and/or your money to an organization which provides legal services to those in need. It is assessing the merits of a case and then referring it to someone who may be more competent to handle it than you. Indigent individuals have the same legal problems as those with money – their problems, as so many seem to perceive, are not limited to the areas of family law and domestic relations. *Pro bono* service is the obligation of every lawyer licensed to practice law in the state of Utah. It is our responsibility to stop looking for excuses not to act in the public interest and find ways to do so. If the Task Force's recommendation assists us to get to that end, then it should be applauded and not criticized.

At Tuesday Night Bar one evening I met a gentlemen, retired for seventeen years from the railroad. The eighty-three year old gentleman was confused when he received a bill for parts and labor from the furnace company. He had bought the furnace three years before and had paid extra for a five year warranty – a warranty that purported to cover parts and labor. He had known the furnace company was under new management when he called and requested that they repair it, but he had assumed his warranty was intact. The bill wasn't much, but on a fixed income, it seemed insurmountable. And hiring a lawyer to assess the validity of the warranty was completely out of the question.

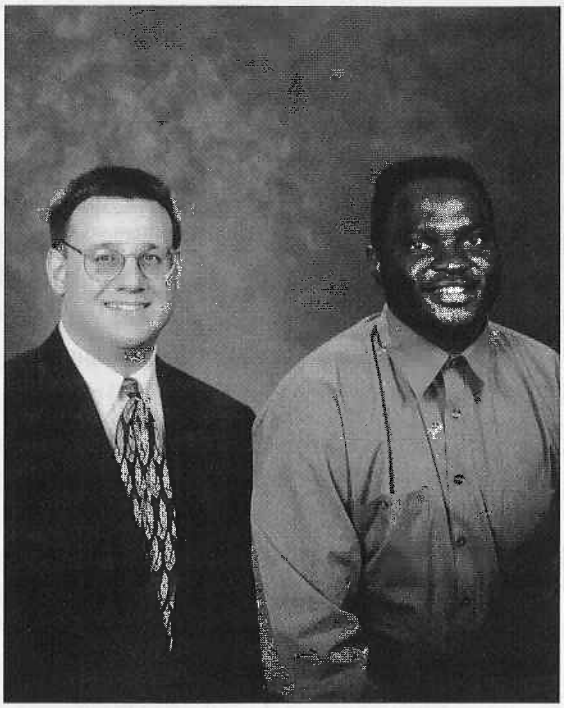
After I spoke with this gentlemen, he was thrilled that his assessment of the situation matched mine, and asked how much he owed me. I explained that the owed me nothing, that the service was *pro bono*. He was awed by the idea that he had been able to speak with a lawyer free of charge. He left smiling, he left with the confidence that his problem was one which was easily solvable, and he left with an improved image of lawyers. Although mandatory *pro bono* reporting may not be the answer, it is certainly a step in the right direction. Opposition to the Task Force's proposal is without basis, without recognition of the serious problem facing the community and most importantly, without a better solution.

[1] *Utah Rules of Professional Conduct* 6.1

[2] *Black's Law Dictionary*, 5th Edition.

Young Lawyers Division Community Service Project on May 30, 1998 at Liberty Park

The Young Lawyers Division in association with Hands on Project of the Salt Lake Volunteer Center and 107.5 FM (The END) will be hosting an afternoon fair from 12:00 to 2:00 p.m. for refugee families. We need your help with the games. All attorneys and their families are invited to come and participate in the food and fun. For more information call John Bowen at 536-8362 or Renee Spooner at 366-0100.



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Utah Task Force on Racial and Ethnic Fairness in the Legal System

by Judge Tyrone E. Medley

Once upon a time when I was a prosecutor in the Salt Lake County Attorney's Office, I was prosecuting a misdemeanor controlled substance charge in justice court in Midvale. Upon review of the police report the day before trial, I was unable to determine the probable cause basis upon which the defendant was stopped and searched. On the day of trial, I asked the officer why he stopped the defendant and the officer responded, "He (defendant) was Mexican and it was late at night." On another occasion after spending all day prosecuting shoplifting offenses, I hurried home to change clothes to play tennis. Before playing tennis I decided to go to Albertsons to get some lamb chops; food is a major weakness and addiction for me. I entered the store, went to the meat counter, and was unable to find lamb chops. On my way out of the store I approached the cash register area and noticed that I was being followed. When I felt the pursuit was just too close for comfort, I turned and asked, "Are you following me?" The security officer responded, "Don't get smart with me, I'll arrest you here on the spot." To which I replied, "I wish you would arrest me on the spot, I would love to own a piece of Mr. Joe Albertsons grocery store!" Apparently, our voices were elevated, because the security officer's supervisor was hustling around an aisle corner toward us. As the supervisor approached, our eyes met and he recognized me immediately. The supervisor then whispered something in the security officer's ear, the security officer scurried away and the supervisor appropriately and thoroughly apologized for the conduct of his employee. For you see, the supervisor recognized me because he and I had spent the majority of that day together in court prosecuting shoplifting offenses.

When I was 12 years old, I can remember running home one evening because it was past my curfew time and I didn't want to incur the wrath of my grandmother. As I ran by the playground, I heard the wheels of a vehicle come to a screeching stop. As I looked up, a man with a gun pointed directly at me approached quickly and ordered me to halt. It was a frightening moment, one I will never forget, having to stare down the barrel of that gun. When the plainclothes officer realized he had stopped a child, he apologized and stated that a robbery had occurred around the corner and that I should hurry home. I know it sounds silly, but that experience still affects me today. Even though I am an avid runner I have a very difficult time running alone at night. A black man running alone at night, in my experience, equals a suspect. It's no wonder why I couldn't find the humor in a joke told to me by a detective when I was still a prosecutor in the Salt Lake County Attorney's office. The joke went something like this: "Hey, Tyrone, do you know how they solve robberies in Denver?" "The cops go down to the black neighborhood and shoot the first black person running!" After all these years I still can't find the humor in that joke.

These anecdotal experiences are real and very common for people of color. Comparable anecdotal experiences are

Judge Tyrone E. Medley was first appointed to the Fifth Circuit Court in July 1984, by Governor Scott M. Matheson and appointed to the Third District Court in December 1992, by Governor Norman H. Bangerter. He graduated from the University of Utah College of Law in 1977. He served as a Deputy Salt Lake County Attorney from 1979 through 1981. He undertook private practice until appointed to the bench in July 1984. Since his appointment he has served on the Board of District Court Judges, the Utah Sentencing Commission, the Supreme Court Advisory Committee on Criminal Procedure and Co-Chair of the Utah Task Force on Racial and Ethnic Fairness in the Legal System. Judge Medley and his wife Yvonne are avid runners. Judge Medley ran in the 100th running of the Boston Marathon and has a respectable 3:12 personal best at the St. George Marathon.

reported to occur by people of color and others at all levels of the criminal justice system. Do these anecdotal experiences have any implications for our criminal justice system? Are these experiences symptomatic of a criminal justice system that is biased against minorities and people of color? Is Utah's criminal justice system free of racial and ethnic bias? If not, to what extent does racial and ethnic unfairness exist in the system? Is racial and ethnic unfairness reality, or does the system merely suffer from the perception of unfairness? Does the Utah criminal justice system render justice irrespective of race and ethnicity? What is the significance of disproportionate minority representation in the juvenile system, county jails, and the Utah State Prison? Can the quality of justice delivered in our criminal justice system be reliably measured and do we have any obligation to do so? I do not have the answers to these questions. However, the Utah judiciary has joined a national state court movement and has taken a leadership role in establishing the Utah Task Force on Racial and Ethnic Fairness in the Legal System to address these issues. The Task Force will focus on Utah's criminal justice system.

Equal treatment for all persons under the law, irrespective of race or ethnicity is the founding concept of American justice. The Task Force will examine how well this concept is functioning in Utah's criminal justice system. This is a major project, therefore, some historical perspective is in order.

"Today, over 30 states and the District of Columbia have established a task force or commission on race and ethnic fairness in the judicial system."

HISTORICAL PERSPECTIVE

On August 4, 1994, the Conference of Chief Justices and the Conference of Court Administrators each issued a resolution recommending that each Chief Justice and Court Administrator nationwide appoint a local state team to attend the First National Conference on Eliminating Racial and Ethnic Bias in the Courts. The resolution also recommended that each Chief Justice and Court Administrator review and consider the recommendations of their respective state teams. In March 1995, the Utah State team, appointed by former Chief Justice Michael D. Zimmerman, attended the First National Conference on Eliminating Racial and Ethnic Bias in the Courts. Members of the Utah State Team were Judge Robert T. Braithwaite, Fifth District Court; Judge Kay A. Lindsay, Fourth District Juvenile Court; Judge Tyrone E. Medley, Third District Court; Judge William A. Thorne, Third District Court; Judge W. Brent West, Second District Court; and Brent M. Johnson, Esq., Administrative Office of the Courts.

The conference was sponsored by the National Center for State Courts and funded by a grant from the State Justice Institute. Many of the most qualified professionals in the nation regarding race and ethnic fairness in the courts were gathered as faculty and presenters, including chairperson, the Honorable Veronica Simmons McBeth, of the Municipal Court of Los Angeles, and Charles J. Ogletree, Jr., Professor of Law, Harvard Law School. The conference was an action oriented event that brought together teams from each state's judicial branch, the federal judiciary, the public and organizations which have a substantial impact on the court system.

The conference objectives included:

- To address the attitude of judicial leaders toward the existence of real and perceived bias or unfairness in the judicial branch.
- To address and present an analytical framework for understanding how personal, institutional, and systematic racial and ethnic unfairness may operate in the judicial environment.
- To provide a forum to assess the policy and management implications of both the existence and elimination of race and ethnic unfairness.
- To inform the conference participants about successful measures taken to eliminate race and ethnic unfairness from the courts.
- To inspire representatives from each jurisdiction to develop and implement a strategy for identifying and eliminating race and ethnic unfairness from their systems.

The focal point of the conference was the fact that over 25 states and the District of Columbia had established a task force or commission to examine the quality of justice and to insure that the judicial system delivers services free from racial and ethnic unfairness. By the end of the conference, organizers and participants hoped and anticipated that all state court systems would create a task force and develop mechanisms to identify and eliminate real and perceived racial and ethnic unfairness in the courts.

SISTER STATE TASK FORCES AND COMMISSIONS

Today, over 30 states and the District of Columbia have established a task force or commission on race and ethnic fairness in the judicial system.[1] These task forces or commissions are in various stages of progress from initial organization, research and data collection to implementation of recommendations. Every state task force or commission that has reported on this issue has identified and discovered real or perceived racial and ethnic unfairness in the courts and the legal system at various

points in the system. These task force and commission reports are extensive and it is impractical in this article to completely summarize their findings. However, a representative sampling of task force findings include the following:

- The perception of bias, even though perhaps groundless, is as important and as detrimental as actual bias. Perceived bias must also be addressed and remedied.
- Persons who do not speak English well are intimidated and frustrated by the judicial system. They are often met with impatience and are often unable to understand basic procedural matters that affect their rights.
- Minorities and people or color are arrested, charged and convicted in larger relative percentages than others, especially when compared to general population percentages.
- Minorities and people of color receive or serve longer sentences than others, despite similarities in crimes, criminal histories and backgrounds.
- Law enforcement officers, correctional officers, judges, judicial employees, lawyers and others in the legal system lack diversity training.
- Minorities and people of color are under-represented on jury venires.

The task forces and commissions that have completed their final reports have recommended and/or implemented remedies that are broad ranging and diverse. Again, it is impractical to adequately summarize these recommendations in this article, however, a representative sampling include the following:

- The very act of creating a task force is beneficial. Many people distrust the judicial system. A task force sends the message that the judiciary is concerned, willing to listen and interested in improving the quality of justice it delivers. Activities such as town meetings provide opportunity to the community to relate experiences, express concerns and perceptions.
- Diversity training should be a part of educational programs for judges, judicial employees, law enforcement officers, correctional officers and others on a regular basis.
- Necessary court forms, signs and notices should be available in different languages.
- Certified interpreters must be provided for by the courts, law enforcement and corrections.
- Jury composition should be reviewed regularly and adjustments made if necessary to insure that juries are representative of the community.
- Develop public relations campaigns designed to encourage minority participation in jury venires.
- Development of thorough record keeping instruments for information on crimes, victims and case disposition by race which will enhance the ability to monitor race or ethnic unfairness in our system of justice.
- Law enforcement, prosecution and defense offices should take all necessary steps to improve the recruitment, retention, and promotion of qualified people of color.

THE UTAH EXPERIENCE

Every state is unique and has its own separate set of issues, problems and challenges. Although there is a lack of information on this subject in Utah, a preliminary review of available information reveals issues and areas of concern consistent with the findings of task forces and commissions established in other states to the extent that further inquiry in Utah must be addressed.

"The Advisory Committee on Disproportionate Minority Confinement made recommendations that encompassed certification of interpreters, data collection, multi-cultural awareness, sensitivity training, prevention and intervention strategies."

For example, the Utah Board of Juvenile Justice and Advisory Committee on Disproportionate Minority Confinement through a grant to the Social Research Institute, University of Utah, Graduate School, conducted a study on Racial Disproportionality in the Utah Juvenile Justice System and found that:

- Minorities are more likely than Caucasian youth to be arrested, referred to juvenile court, convicted and placed in probation, Division of Family Services, or Division of Youth Corrections supervision.
- Racial disproportionality begins at the point of arrest and continues through the entire juvenile justice system.
- Minorities are more likely to be placed in Division of Youth Corrections custody following a juvenile court conviction.
- There is little difference in the lifetime offending records of Caucasian and minority youth at each stage or decision point of the juvenile justice system.

The Advisory Committee on Disproportionate Minority Confinement made recommendations that encompassed certification of interpreters, data collection, multi-cultural awareness, sensitivity training, prevention and intervention strategies. The committee's recommendations were limited to the juvenile system, however, the committee acknowledged the application of issues and recommendations to the adult system and strongly recommended that the adult system be examined as well. Another potential study issue in Utah may be racial dispropor-

tionality at the Utah State Prison as established by the 1997 Department of Corrections Annual Report.

	Prison Population	Population In Utah
African Americans	7.65%	.07%
Hispanic	19.16%	6.10%
Asian	2.19%	2.40%
Native American	3.20%	1.40%
Unknown	1.40%	

It is unlikely that raw statistics can tell the full story, however, as in other states, Utah's statistics are ripe for further explanation.

A final example of available local information is the Utah Board of Bar Commissioners, Equal Administration of Justice Committee, Preliminary Report which found that:

- Little, if any, information or education is provided to those in the legal system about how discrimination occurs. Thus, some believe that if no evil, blatantly intentional efforts to discriminate exists, no discrimination occurs.
- Little coordination and review of statistics exist within or among agencies to determine on a regular basis the existence of any disparate impact on ethnic and racial minorities.
- Minorities are not well-represented in the legal system as judges, attorneys, counselors, clerks, bailiffs, teachers, police officers, etc. This lack of representation causes at least discomfort (and at times distrust) by minorities, victims, defendants, witnesses, etc. of the legal system.
- There is a perception that the criminal justice system is generally more tolerant of Caucasian defendants and expects more rehabilitation from Caucasian defendants.

The committee's preliminary report included a strong recommendation in support of the Judicial Council's Utah Task Force on Racial and Ethnic Fairness in the Legal System. The Committee further recommended that the Utah State Bar, in cooperation with the judiciary, law enforcement, Administrative Office of the Courts and community groups take a leadership role in implementing its recommendations.

UTAH'S RESPONSE

The Utah State Team attending the First National Conference on Eliminating Racial and Ethnic Bias in the Courts recommended that the Judicial Council and judiciary take an active leadership role in examining racial and ethnic fairness in the legal system. This leadership role will provide the opportunity to identify that which is working well and that which is need of correction. This leadership role will hopefully place the judiciary and criminal justice system in a pro-active solution oriented mode instead of in a reactive mode, having to address specific instances of alleged discrimination and unfairness on an emergency case by case basis.

The courts as an institution have the responsibility of making fair and just determinations about the rights of all people, regardless of their racial or ethnic background. In this country and state the rights and duties of all who reside here are defined by law, our state and federal Constitutions and legislative enactments. The courts, lawyers, law enforcement agencies and the associated institutions are the elements and structure of our criminal justice system. If real or perceived racial or ethnic bias exists in these structures or in the operations of the criminal justice system, then a degeneration exists that goes to the very foundation of this state and nation. The following fable is illustrative:

"The Committee further recommended that the Utah State Bar, in cooperation with the judiciary, law enforcement, Administrative Office of the Courts and community groups, take a leadership role in implementing its recommendations."

> A swallow had built her nest under the eaves of a Court of Justice. Before her young ones could fly, a serpent gliding out of his hole ate them all up. When the poor bird returned to her nest and found it empty, she began a pitiable wailing. A neighbor suggested, by way of comfort, that she was not the first bird who had lost her young. "True," she replied, "but it is not only my little ones that I mourn, but that I should have been wronged in the very place where the injured fly for justice."
>
> Aesop's Fables

Although this fable was recorded between 300 and 350 B.C., its message is just as applicable today as it was over two millennia ago. It is therefore essential for the effectiveness and credibility of the criminal justice system and the entire system of government that any actual and perceived racial or ethnic bias be addressed. Addressing actual and perceived bias in the criminal justice system in Utah will not be an exercise in liberal or conservative political correctness, but is a matter of fundamental fairness which is essential to the viability of our system of government.

In March 1996, with the foregoing principles in mind, the Judi-

cial Council which is the administrative governing body of the judiciary, unanimously authorized the creation of the Utah Task Force on Racial and Ethnic Fairness in the Legal System. Former Chief Justice Michael D. Zimmerman, as chairperson of the task force, has provided strong, enthusiastic support for the mission and goals of the task force. John T. Nielsen, Senior Counsel for Intermountain Health Care, and Third District Judge Tyrone E. Medley serve as co-chairs. Jennifer M.J. Yim, Administrative Office of the Courts, is the director of the task force. In March 1997, the Judicial Council finalized a 30 member task force roster.[2] The task force members have hundreds of years of cumulative experience in the Utah criminal justice system. The perspective of task force members range from those who believe that blatant intentional discrimination in the criminal justice system is non-existent or rare, to those who are personally offended by the fact that anyone would question the existence of racial and ethnic bias in the criminal justice system. This diversity of perspectives has resulted in thorough, healthy debate of the issues to date and should continue to provide a balanced approach to the examination of issues which are potentially explosive and divisive. The task force's diverse perspectives and commitment to evaluate and improve our criminal justice system creates balance which is the task force's greatest strength. This balance is exemplified by the mission statement adopted by the task force.

"This diversity of perspectives has resulted in thorough, healthy debate of the issues to date and should continue to provide a balanced approach to the examination of issues which are potentially explosive and divisive."

MISSION STATEMENT

The Utah Task Force on Racial and Ethnic Fairness exists to organize and lead the effort to honestly examine and address real and perceived bias toward racial and ethnic minorities within Utah's criminal justice system. The Task Force shall conduct necessary research, develop and disseminate findings and recommendations, advancing in all quarters for the implementation of those recommendations.

The primary activities of the Task Force shall include:

1. Research: The identification and utilization of appropriate research methods, the collection and evaluation of the data to determine the extent to which race and ethnicity affect the dispensation of justice through explicit bias and implicit institutional practices. Methods may include, but are not limited to, the utilization of prior studies, surveys, public hearings, focus groups, and the evaluation of existing policies.

2. Findings: The publishing of findings of the data gathered as a result of the Task Force's assessment. Findings will be published in a final report to the Judicial Council, with preliminary findings available via interim progress reports to the Judicial Council.

3. Recommendations: The creation and publishing of recommendations for all aspects of the legal system, including appropriate agencies, community groups, and private citizens to ensure equal access to justice. Recommendations shall include appropriate strategies for implementation as recommended by the Task Force.

4. Partnerships: The development of partnerships both in the legal system and in the broader community to assist in the efforts of the task force to include a broad cross-section of Utah's communities, particularly its ethnic minority communities, both in the fulfillment of its mission and in ensuring the implementation of its findings.

The Task Force has seven committees which are primarily designated in accordance with the procedural components of the criminal justice system.[3] Each committee has from 10 to 15 members for a combined total of task force and committee members of approximately 120 members.

The Judicial Council and task force leadership made a deliberate attempt to include all of the representative components of the criminal justice system and the community, including Utah's minority communities, as task force members. The challenge was to be as inclusive as possible for task force membership, yet maintain a manageable, efficient sized task force. Inevitably, someone or a particular perspective may be excluded. Any exclusion is not intentional, as the task force will benefit from hearing every opinion and perspective. One of the purposes of this article is to inform members of the bar and community of the task force, its mission, and to solicit your input, expertise and experience to aid the task force in accomplishing its goals and mission. This is our criminal justice system, this is your criminal justice system. I would like to challenge you to claim some ownership of this project, the buck stops here! Ask yourself, "How can I contribute to the success of this project?" Over

the next year, the task force will have various needs and requirements, accept the challenge and give us a call!

The Judicial Council has recommended that the work of the task force be completed in two years. The task force hopes to conclude its work with a final report and implementation plan by the summer of 1999. The task force held its first meeting in May 1997. The focus of the task force the first year has been on organization, process, procedure, and education. First year activities of the task force included cultural sensitivity training for task force members, hiring of task force director, communication and conflict resolution training, sister state task force operations, findings and recommendations, development of a mission statement, establishment of task force committee structure and membership, and establishment of a research agenda. The second year will center largely on research projects, analyzing data and research results culminating with a final report, recommendations and an implementation plan. Second year task force activities will include public hearings, surveys, focus groups, analysis of existing data bases and targeted research projects.

It should be noted that studies designed to examine race and ethnic fairness in the judicial system are not without their critics.[4] Opponents challenge the methodology of these studies, claim the studies waste valuable resources, that the studies can be deeply divisive within the judiciary and that these studies gravitate towards proportional representation which is a political issue inappropriately pursued by a group under judicial auspices.

In the end, it is difficult for this author to understand how one can question the importance of insuring that our courts and the criminal justice system function fairly and honestly, irrespective of one's race or ethnicity. This is a matter of fundamental fairness, not political correctness. While this process will be difficult and uncomfortable, the prize at the end is insuring the realization of the American Dream: Equal Justice Under the Law! This is a call to duty, we need your help.

[1]Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin.

[2]Task Force Membership:

Chief Justice Michael D. Zimmerman, Utah Supreme Court, Task Force Chairperson
Judge Tyrone E. Medley, Third District Court, Division I, Task Force Co-Chair
John T. Nielsen, Senior Counsel, Intermountain Health Care, Task Force Co-Chair
Daniel Becker, State Court Administrator, Utah Administrative Office of the Courts
Paul Boyden, Director, Statewide Association of Prosecutors
Susan Burke, Anti-Violence Coordinator, Governor's Commission on Criminal & Juvenile Justice
Reverend France Davis, Calgary Baptist Church
Judge Lynn W. Davis, Fourth District Court
Professor David Dominguez, Brigham Young University, College of Law
State Representative Christine Fox-Finlinson, Attorney at Law, Callister, Nebeker & McCullough
James Gillespie, Director, Northern Utah Community Corrections
Neal Gunnerson, Salt Lake District Attorney
H.L. "Pete" Haun, Executive Director, Utah Department of Corrections
John Hill, Director, Salt Lake Legal Defenders Association
Judge Glenn K. Iwasaki, Third District Court, Division I
Sheriff Aaron Kennard, Salt Lake County Sheriff
Donna Land-Maldonado, Manager, KRCL Community Radio
Dan Maldonado, Assistant Director, Division of Youth Corrections
Charlotte Miller, President, Utah State Bar
Haruko Moriyasu, Director, Asian American Studies, University of Utah
Judge Jody Petry, Uintah County Justice Court
Lorenzo Riffo, Executive, National Business Development
Michael Sibbett, Chairperson, Utah Board of Pardons & Parole
State Senator Pete Suazo
Lee Teitelbaum, Dean, University of Utah, College of Law
Judge William A. Thorne, Third District Court, Division I
Filia Uipi, Attorney at Law
Judge Andrew A. Valdez, Third District Juvenile Court
Judge W. Brent West, Second District Court
Jeanetta Williams, President, Salt Lake Chapter NAACP

[3]**Pre-Adjudication Committee:** to examine those segments of the criminal justice system that occur prior to any appearance in court with a primary focus on law enforcement.

Representation Committee: to examine system after arrest and charging through disposition with a primary focus on prosecution and defense.

Courts Committee: to examine aspects of the criminal justice system that relate specifically to the adjudication process.

Post Adjudication Committee: to examine the criminal justice system from sentencing and after with focus on probation, parole and corrections.

Community Resources Committee: to examine referrals to community programs, community resources, with a focus on quality and effect of programs on racial and ethnic minorities.

Client Committee: to examine and evaluate the experiences and perceptions of offenders, victims and their families with respect to racial and ethnic fairness in the criminal justice system.

Juvenile Committee: to examine the juvenile justice system for real and perceived bias due to race or ethnicity.

[4]"Taking Bias to Task," by Pamela Coyle, *ABA Journal*, April 1996, pp. 63-67.

Legal Aid Society Offers Hope to Domestic Violence Victims

Legal Aid Society is a nonprofit organization that has been serving the legal needs of our community since 1922. In recent years, Legal Aid Society has narrowed the scope of service to providing legal representation to low-income individuals with family law cases.

Specifically, Legal Aid Society assists individuals with divorce, child custody and support, visitation, guardianship and modification of orders. There is a two month waiting list for these services. 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.

A new program that was just recently started is our Bridge the Gap Program. This program allows victims of domestic violence in a crisis situation to bypass the Domestic Relations waiting list and have their case opened immediately. This allows the two programs to work together closely and provide top quality representation for the victim.

We recently assisted a 22-year-old female, named Cindy. She had been married for two years and had no children. Just shortly after their wedding, her husband changed into a controlling and abusive man. She realized that the escalating abuse and manipulation were not part of a loving and mutually rewarding marriage. She gathered the courage to tell her husband that she wanted out of the relationship. Unfortunately, that was when the violence really began. Her husband responded by holding her hostage with a shotgun for 12 hours. She was finally able to get out and go to a neighbor's house to contact police. After filing a police report, the officer advised Cindy to contact Legal Aid Society to obtain a Protective Order while they conducted their investigation.

She came to Legal Aid Society and filed the necessary legal documents through the Domestic Violence Victim Assistance Program for a Protective Order. A hearing was set for two weeks later.

While she was at Legal Aid Society, she was informed of a new program called Bridge the Gap. The program provides for expedited legal representation in Divorce or Paternity cases for victims like Cindy. Cindy agreed that because she felt her life was in danger that this expedited service to file her divorce immediately would be beneficial. Cindy met with the Bridge the Gap attorney so that her case could be started.

Legal Aid Society Staff: (l-r) Paralegal Teresa Sproul, Paralegal J. Valerie Killian-Jeffs, Domestic Violence Attorney Joanna B. Sagers, and Bridge the Gap Attorney Matthew A. Steward.

Two weeks later, at the Protective Order hearing, Cindy was represented in court by Joanna Sagers, the Domestic Violence Victim Assistance attorney. Because the two programs work so closely together, the Bailiff at the Protective Order hearing was able to serve her husband with the Divorce Complaint prepared by the Bridge the Gap legal team. To Cindy's relief, the Court entered a permanent Protective Order. Cindy had taken a giant step toward freedom. But as she left the Protective Order hearing, she noticed her husband following her on his motorcycle. She felt safer, but still afraid. He was still her husband.

For the next two months, Legal Aid Society's Bridge the Gap attorney, Matthew Steward, and his paralegals, Teresa Sproul and J. Valerie Killian-Jeffs, represented Cindy with her divorce proceedings. After a lot of dedicated work, the Judge granted Cindy her divorce. If not for Legal Aid Society she would still be married to the man who had held her hostage. Legal Aid Society allowed Cindy to make a clean and expedient break of the cycle of domestic violence. When her case was completed Cindy said that without the support of Legal Aid Society she would not have been able to get out of a relationship that was headed for disaster.

Snell & Wilmer L.L.P.

is pleased to announce that the following attorneys have joined our firm

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Fax: 520.884.1294

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Irvine, CA 92614
Tel: 714.253.2700
Fax: 714.955.2507

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CLE Calendar

ALI-ABA SATELLITE SEMINAR:
TACKLING THE TOUGH TOXIC WASTE PROBLEMS:
CERCLA, RCRA, AND BROWNFIELDS

Date: Tuesday, May 5, 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

ANNUAL CORPORATE COUNSEL SECTION SEMINAR

Date: Thursday, May 7, 1998
Time: Registration & Continental Breakfast – 7:30 a.m.
Seminar – 8:00 a.m. to 12:00 noon
Section Business Meeting & Luncheon – 12:00 noon
Place: Utah Law & Justice Center
Fee: $40.00 for Corporate Counsel Section Members
$55.00 for All Others
CLE Credit: 4 HOURS, which includes 1 in ETHICS

ANNUAL FAMILY LAW SECTION SEMINAR

Date: Friday, May 8, 1998
Time: 9:00 a.m. to 4:30 p.m.
(Registration begins at 8:30 a.m.)
Place: Utah Law & Justice Center
Fee: $110.00 for Family Law Section members
$120.00 for Non-section members
Add $15.00 for Door registration
CLE Credit: 7 HOURS, which includes 1 in ETHICS

ALI-ABA SATELLITE SEMINAR:
1998 UPDATE – THE CLEAN WATER ACT

Date: Tuesday, May 12, 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: EFFECTIVE COMMUNICATIONS

Date: Thursday, May 14, 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:
ANNUAL SPRING ESTATE PLANNING PRACTICE UPDATE

Date: Wednesday, May 20, 1998
Time: 10:00 a.m. to 1:15 p.m.
Place: Utah Law & Justice Center
Fee: $149.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 3 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.

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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.

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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.

ALI-ABA SATELLITE SEMINAR:
PLANNING FOR DISTRIBUTION FROM QUALIFIED PLANS AND IRAs – INCLUDING LIFETIME AND ESTATE PLANNING AND THE ROTH IRA

Date: Thursday, May 21, 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 PART III: FACT WITNESSES

Date: Wednesday, May 27, 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 all others
CLE Credit: 2 HOURS CLE/NLCLE

ALI-ABA SATELLITE SEMINAR:
SUCCEEDING AS A WOMAN ADVOCATE

Date: Thursday, May 28, 1998
Time: 10:00 a.m. to 2:00 p.m.
Place: Utah Law & Justice Center
Fee: $145.00 (To register, please call 1-800-CLE-NEWS)
CLE Credit: 4 HOURS

NLCLE: INTELLECTUAL PROPERTY

Date: Thursday, June 4, 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:
ERISA FIDUCIARY RESPONSIBILITY ISSUES UPDATE – QUALIFIED PENSION AND 401(k) PLANS, ESOPs, AND MANAGED CARE PLANS

Date: Thursday, June 4, 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

WHY BAD THINGS HAPPEN TO GOOD LAWYERS

Date: Friday, June 5, 1998
Time: 9:00 a.m. to 4:00 p.m.
(Registration begins at 8:30 a.m.)
Place: Utah Law & Justice Center
Fee: $125.00 (must be received no later than Wednesday June 3, 1998)
CLE Credit: 6 HOURS ETHICS

Classified Ads

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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

Suitter Axland is seeking a business transactions, corporate, securities, tax and estate planning attorney with two to five years experience. Strong academic credentials and writing skills required. Send confidential resume to Blake Miller, Suitter Axland, 175 South West Temple, Suite 700, Salt Lake City, UT 84101.

Salt Lake Firm seeking full time Tax Attorney, recent law school graduate. Send a resume to Maud C. Thurman, Utah State Bar, 645 South 200 East, Confidential Box #45, Salt Lake City, UT 84111.

Attorney with two years experience practicing law. Experience in bankruptcy and litigation preferred. Please send resume to 341 South Main Street, Suite 201, Salt Lake City, Utah 84111, or call Randall R. Smart @ (801) 538-0400.

Salt Lake City business and estate planning firm seeks attorney with 2-3 years business and estate planning experience. Position involves significant client contact and excellent written and verbal communication skills are required. Inquiries will be kept confidential. Please send resume and references to: Maud C. Thurman, Utah State Bar, 645 South 200 East, Confidential Box #49, Salt Lake City, UT 84111.

Salt Lake City office of a large regional law firm, with rapidly expanding high-tech and emerging business practice, seeks an attorney with substantial experience in securities law (including initial public offerings and public reporting companies), mergers, acquisitions and emerging growth business. Some portable business helpful. Excellent academic credentials, communication skills and initiative. Please send resumes and transaction list to: Maud C. Thurman, Utah State Bar, 645 South 200 East, Confidential Box #50, Salt Lake City, UT 84111. EOE.

HEARING OFFICER: West Valley City is currently seeking Administrative Hearing Officers on a part-time, as needed basis. Experience in zoning law and/or nuisance abatement and/or animal control is necessary. Experience with administrative hearing procedures preferred, not essential. Compensation is $35.00 per hour. Please submit resumé to Candace Gleed, ACE Coordinator, 3600 Constitution Blvd., West Valley City, UT 84119. For additional information or questions, call 963-3389.

IMMEDIATE OPENING: ASSOCIATE ATTORNEY POSITION AVAILABLE AND/OR OFFICE SHARE ARRANGEMENT WITH OVERFLOW WORK IN NEW SUITES. Layton Law firm seeking an associate with minimum two years experience in practice of civil litigation and commercial and real estate transactions. Full benefits package with salary commensurate with experience. Also willing to consider an office share arrangement with overflow work. Send resume and writing sample to: DURBANO LAW FIRM, 476 West Heritage Park Blvd., #200, Layton, UT 84041.

ASSOCIATE ATTORNEY POSITION AVAILABLE – COLORADO: Thirteen lawyer, AV rated firm in western Colorado seeks versatile attorney with 2-4 years' experience. Excellent academic credentials, writing and analytical skills required. Sophisticated practice in small town setting with year-round outdoor recreational opportunities. Send resume and writing sample to Firm Administrator, Hoskin, Farina, Aldrich & Kampf, P.C. Post Office Box 40, Grand Junction, Colorado 81502.

Salt Lake County attorney needs attorney to handle debtor exams and related matters in Salt Lake District Court and other counties on a fee basis. Call Mike @ (801) 968-3501.

POSITIONS SOUGHT

BAR COMPLAINT DEFENSE ATTORNEY: Representation in all Bar disciplinary proceedings. Let me assist you in preparing your response to that Bar Complaint. Five years as Assistant Disciplinary Counsel, Utah State Bar. Wendell K. Smith, 275 East 850 South, Richmond, UT 84333, (435) 258-0011. wksmith@mtwest.net

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) 583-0206 or (801) 534-0909.

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.

Experienced attorney in the areas of: tax, commercial and bankruptcy litigation and criminal defense; 10 years with IRS; 33 trials, hundreds of adversarial hearings; will be in Utah from June 22-July 10 for job search; Ted Weckel (703) 979-3001.

CALIFORNIA/UTAH ATTORNEY: Attorney has offices in both Southern California and Salt Lake City. Available for court appearances and other work in California. Call George L. Wright @ (801) 322-3000.

California lawyer located in Utah seeks contract work. Will perform legal research/writing in Cal/Utah law. Areas: corporate, product liability, personal injury/property damage, construction, litigation, defamation/privacy, insurance, commercial/business, transportation and landlord/tenant law. Hourly rate negotiable. Contact Laura Rasmussen @ (801) 476-0723 or mrasmussen@bigfoot.com.

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Historic Building on Exchange Place leasing 1600 square foot office space on garden level with five individual offices, reception/secretarial area, storage room and separate outside entrance. Great for small firm requiring easy court access. 4 to 5 parking stalls available. $1600. Also available 350 sq. foot individual office space for $380.00. Contact Joanne Brooks, (801) 534-0909.

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Small law firm downtown with deluxe office space for one attorney. Facilities include private office, receptionist, conference room, limited library, fax, copier, telephone system, kitchen facilities. Call Lori @ (801) 532-7858.

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Paralegal needed for busy, demanding family law practice. Experience preferred. Salary negotiable. Send resume to: Maud C. Thurman, Utah State Bar, Box #48, 645 South 200 East, Salt Lake City, UT 84111.

Get to Know Your Bar Staff

JOYCE SEELEY

Joyce, a life long resident of Salt Lake City, came to the Utah State Bar on June 12, 1989. Joyce is the Financial Assistant to Arnold Birrell, Financial Administrator for the bar. Joyce, who loves classical music, gardening, and most of all her grandchildren, assists Arnold in administering health benefits and expenses for Bar employees, handling accounts receivable and payable, and assisting in licensing of Utah attorneys.

Joyce has three adult children, Deena, Bob and Sharon, all of whom she proudly points out, were adopted. Her three grandchildren live in Southern California and are "my life" says Joyce with a broad smile.

Besides classical music, which is always playing softly on KBYU at her desk, Joyce loves basketball and football. Her life in Salt Lake City is a history of life on South Main and South State. Joyce graduated from South High School in 1951. Her father owned and operated Cummings Drive-In on 11th South and Main while she was growing up. Her father made the ice cream for the drive-in, and her grandfather served his special root beer recipe. Every year for Pioneer Days, her grandfather would sell over 150 gallons of his root beer. Joyce remembers that the malts at her father's drive-in were the best. With the advent of national chains in the 1970's, Cummings closed in 1976. She remembers her mother as "my friend and a wonderful person."

After graduating from South High, Joyce worked for several years as a bookkeeper for Salt Lake City businesses including Makoff's, and then went to work for the Salt Lake City Board of Education where she met her former husband Dean. For several years, Joyce and Dean owned and operated motels and apartments on South State and South Main. Later Joyce worked as the bookkeeper for Star Brass Foundry, where she learned to load shotgun shells because her employer loved to shoot skeet! She also worked as bookkeeper for Clark Financial Corp. and Utah Title.

Joyce is an accomplished seamstress. For eight years, she operated her own dress making business sewing such clothes as wedding dresses, cheer leader uniforms, and choir dresses.

To relax these days, Joyce watches old movies, especially musicals. She crochets and also loves to watch the Discovery Channel. Her goal is to travel more outside of Utah and to one day make it to East Africa.

On Joyce's desk, there is a quote from Abraham Lincoln, which says, "most folks are about as happy as they make their minds up to be." When you talk to Joyce, one thing you learn is how much she feels blessed in her life, how much she really loves her job at the Bar, and how she actually looks forward to coming to work each day. She truly has taken Lincoln's words to heart.

CHARLES A. GRUBER

Assistant Counsel in the Office of Professional Conduct

Charles was born in Bartow, Florida, February 14, 1950, moved to Plainview, Texas as a baby. His family moved around while his Mom was in graduate school, then back to Texas.

He graduated from Nacogdochas High School. He then attended Stephen F. Austin State University where his areas of emphasis were History, English and Music. He played the French horn and piano. He attended The University of Texas School of Law and while studying law he also studied music and creative writing and performed in plays and musical programs. Charles performed as a child actor and musician and he played the piano at concerts with his dad who played the violin. He graduated from law school in 1976. He then went to work for Texas Alcohol Beverage Commission from 1977-83 prosecuting violations such as drug sales, prostitution, tax evasion, anti-trust, etc. From 1983 to 1985 he worked for Texas Attorney General's Office, in its Taxation Division

In 1985, he left Texas and moved to Los Angeles to be an actor. After ten years, he finally decided he needed to eat so he went to work for The University of California at Irvine, Medical School, negotiating contracts. During this time he also taught acting. Then Charles decided he wanted to get re-married and have a family. He took the California Bar exam and went to work for Maloney & Mullen in Santa Monica doing Civil Litigation and Personal Injury cases.

Charles met Debra while in an acting class, they fell in love and married in 1990. Debra had three children, Terry, Sady and Kelly. Their son Benjamin was born in 1993. In 1996 Charles and Debra (who grew up in Granger) decided they wanted to

move to Salt Lake City for a safer and more wholesome environment for the children, so Charles took the Utah State Bar exam and passed. He came to work for the Bar on July 25, 1996.

He likes being an actor and does this now and then. He has appeared in a couple of episodes of Promised Land, aired on Channel 2, Thursday nights. As a child he loved fishing and does enjoy taking his son and daughter when possible. He is a Dodger fan, also Utah Jazz, Cowboys and Longhorns. His dream was to play centerfield for the Yankees, unfortunately he couldn't hit a curve ball.

To Charles his family is the most important thing in his life. He says, his wife and children are his life.

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Tel: 297-7037

CERTIFICATE OF COMPLIANCE

For Years 19_____ and 19_____

Utah State Board of
Continuing Legal Education
Utah Law and Justice Center
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 one-half of the credit hour requirement 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.

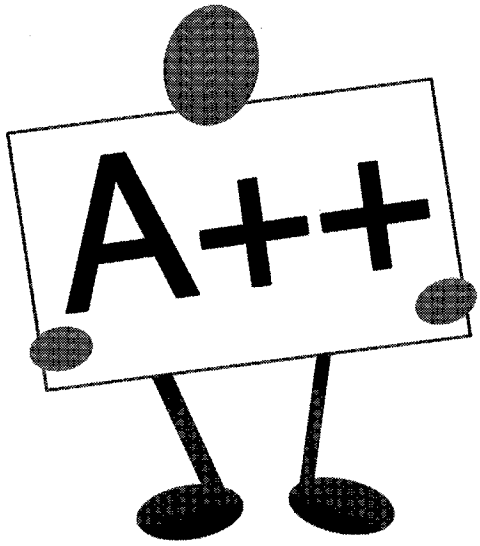
THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION SEE REGULATION 4(d)-101 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.

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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