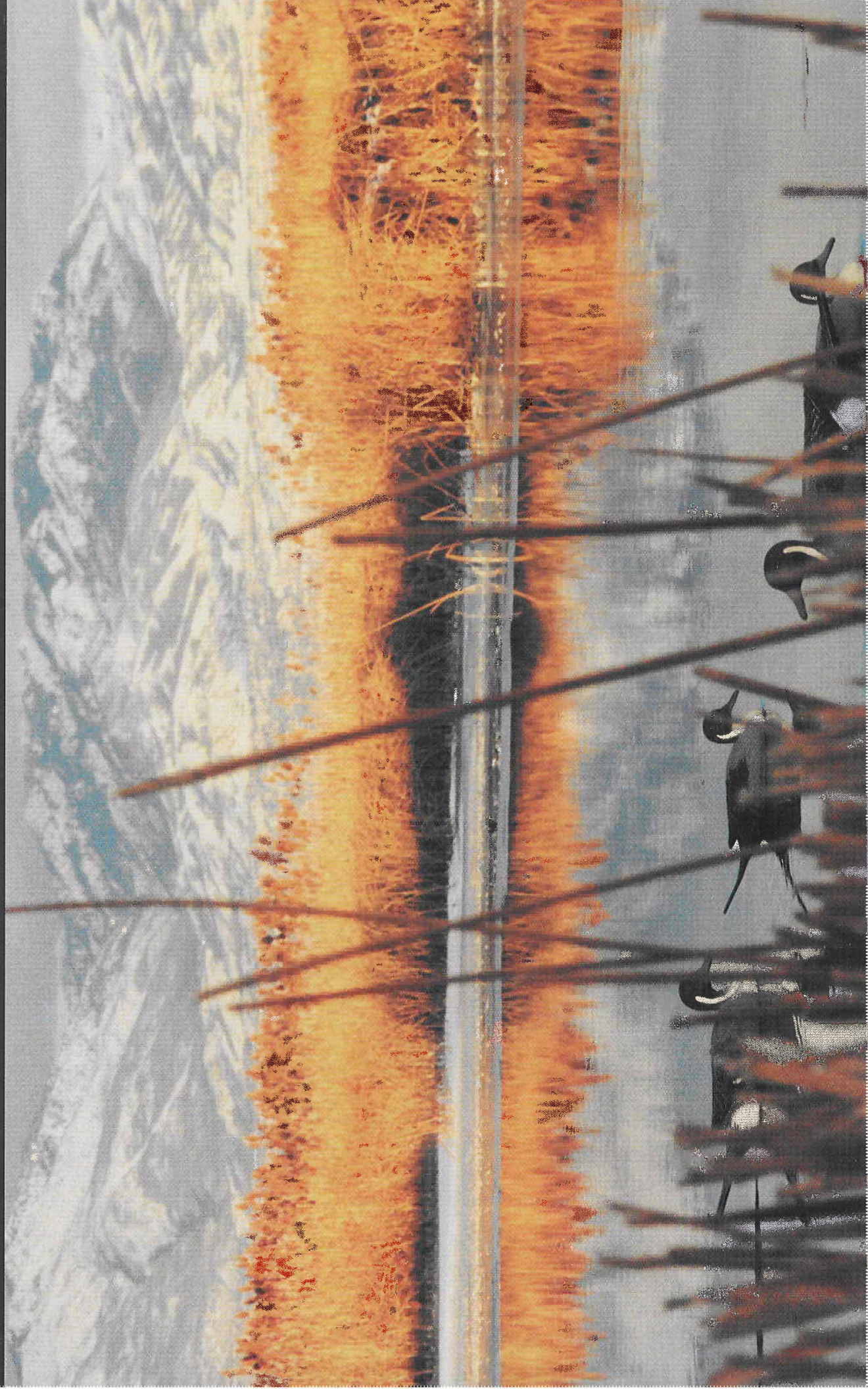


# Utah Bar Journal

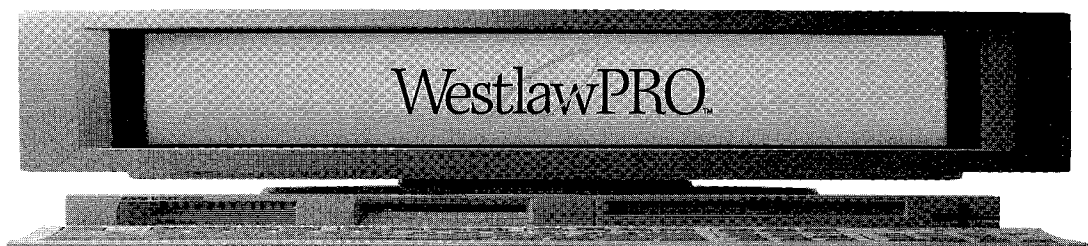
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# Table of Contents

President's Message Access to Justice by James C. Jenkins	5
Commissioner's Report Leave It Better Than You Found It by Randy Kester	8
Far Too Many Utah Crime Victims: The Results of Four Years of Unprecedented Crime Rate Increases by Michael L. Hutchings and Gerald W. Smith	11
The General Aviation Case by Wendell K. Smith, esq.	17
Railroads: The Lifeblood of the Nation by Dennis C. Farley	19
State Bar News	22
The Young Lawyer	32
Legal Assistants Forum	38
Utah Bar Foundation	44
CLE Calendar	47
Classified Ads	49

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**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:** The Great Salt Lake Wetlands by Marcus G. Theodore, Esq. of Salt Lake City, Utah.

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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.
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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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www.utahbar.org

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### *Access to Justice*

*by James C. Jenkins*

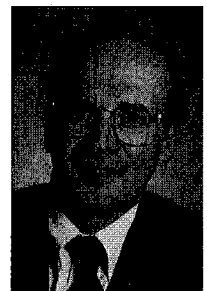
Last week a young mother called me. She called because she knew I was a lawyer and she needed help. Her husband had abandoned her and their five children on Christmas Eve. He had a history of trouble holding onto a job. Six months earlier, they had been forced into bankruptcy. The husband was despondent and frustrated and had given up. She couldn't continue to pay the present rent although she had secured a part-time job. She told me she needed advice about divorce and securing a new home. Most lawyers have had similar experiences with a call for help. I'm glad that one of my partners and I could do something for her.

Since 1995 the Bar Commission has actively engaged in efforts to enhance the availability of justice to residents of Utah. You will recall that initially our effort was triggered by the reduction in federal funding to the Legal Services Corporation and corresponding reductions to Utah Legal Services and other agencies who, for the prior decade, had assumed the principal burden of providing legal services to the poor and disadvantaged. We've made considerable progress since then, but there is yet much to be done.

Research conducted by the Access to Justice Task Force of the Utah State Bar revealed that Utah low-income households would experience more than 75,000 new legal needs each year. Many of these legal needs are in areas of crises to people who have little or no resources with which to deal with their problems. Not only do they lack financial resources, but often they are without family support or friends to address their problems. Many require legal services in meeting basic needs for shelter, food, and utilities; others require legal assistance to obtain or preserve fundamental benefits and access to health care; and, others need help with serious and immediate family issues like child care, custody, and prevention from abuse. In 1997 the Disability Law Center, Legal Aid Society of Salt Lake, and Utah Legal Services were able to provide assistance to 14,661 individuals. Obviously there is a tremendous need yet to be met.

I would hope that every Utah lawyer, regardless of background, specialty, or career accepts the fundamental principal that we have a responsibility to help – not merely because of our inherent duty to our fellow man, but because as lawyers, we possess the exclusive privilege to practice law. I also hope that we can help every other citizen of Utah understand that lawyers alone do not bear this responsibility. Justice will not be for “all” until we all recognize and assume our cooperative responsibilities. Everyone must do what they can. Here is a list of some of our current efforts:

- I am asking the Commission to create special committees to identify the nature and scope of volunteer work that can be provided by specific groups of our profession, including judges, government attorneys, corporate and “in-house” attorneys, and those with inactive licenses. If you have an interest in serving on such a committee, please contact me.
- I plan, in cooperation with the Bar's Governmental Affairs Committee, to seek an appropriation from the Legislature to fund in partnership with the Bar, and other charitable groups and individuals the Access to Justice Foundation, which was incorporated last year to coordinate volunteer services of our members and over-flow cases from the legal services agencies. A call or letter from the members of the Bar to their respective legislators in support of this financial partnership and appropriation will help secure its success.
- Each of you by now has received information about the cooperative fund raising campaign for the benefit of the Disability Law Center, Legal Aid Society of Salt Lake, and Utah Legal Services entitled “and Justice for all.” A financial commitment from every member of the Bar sends a strong message to the public of our commitment to the principal of providing everyone with meaningful access to justice.
- I have received numerous calls and letters from attorneys around the state

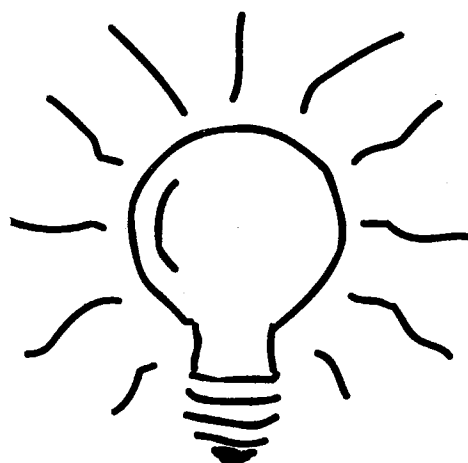


telling of the work they are doing or that other attorneys are doing in their own communities to help the less fortunate and to promote equal access to our legal system. This dedicated voluntary effort is the core function necessary to meet these needs. I hope we can promote better awareness of these needs and a universal sensitivity among the profession and the public of our respective obligations to help.

- One of the charges of the Access to Justice Foundation is to identify ways and means to provide the disadvantaged with access to justice. As the Foundation develops a plan to address this problem, the Bar must stand ready to support and sustain these efforts.

I hope that will all the many demands and responsibilities that each of us must address, we will not forget our duty to the poor and needy. Our individual voluntary efforts make a difference, and together we can make our communities a better place and lighten the burdens of those about us. Will you do your part? Is there something more you can do that yet has not been done?

Thank you for the good you do. Please contact me or your Bar Commissioner with your ideas and comments.



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The Utah Judicial Council is committed to six public hearings on issues in the administration of justice in family law. To inform and promote public awareness of these vital issues, Utah Children is sponsoring this dialog, which is directed at reviewing a 1994 task force report in light of subsequent national experience with family court systems. The discussion will also encourage audience consideration of the present needs of children and families within Utah's justice system.

**For additional information, please contact:**

**Mary Boudreau, Family Court Project Specialist, 466-6531**  
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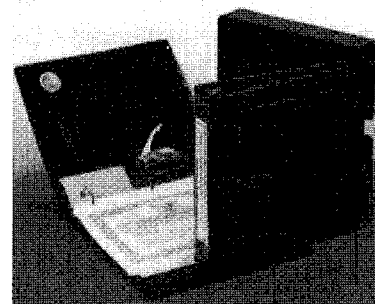
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# Leave It Better Than You Found It

by Randy Kester

**I**t has now been about 15 months since the death of my father, Everett Solomon Kester. He was very quiet and systematic in his approach to life, having had only an 8th grade education. He was also fairly small never having reached more than about 135 lbs.

He lived some of his childhood in Murray City and then his family moved to a large homestead-ranch, first in Elberta and then in the West "Pole Canyon" of Santaquin. His family later returned to the "Metropolis" of Santaquin City in South Utah County where he called home until he left us all at age 84. He was 9 years my mother's elder, but outlived her by 10 years. I think he hung around long enough to make sure he finished the job mom had started in raising their 6 children.

"Out on the range," in Elberta, dad started at an early age smoking cigarettes, pipes, chewing tobacco and indulged a variety of alcoholic drinks. He continued these habits until a heart attack nearly cost him his life in 1974, when he stopped smoking. His habits nonetheless, throughout his 26 years of driving to and from working at the Geneva Steel plant, never caused him an accident nor to miss a days work. He never got any traffic citations, any DUI's, or alcohol tickets, nor was he ever involved in any accident due to any fault of his. I never saw my father ever strike, push or threaten my mom, nor was I or any of my siblings ever physically disciplined or verbally abused. He simply did not believe in corporal punishment. If you did, however, continue to make too much noise while he was watching Gunsmoke, Paladin or the Rifleman, you would find yourself "rain, sleet or snow," standing outside on the front porch, (with the front door closed) until you got the message.

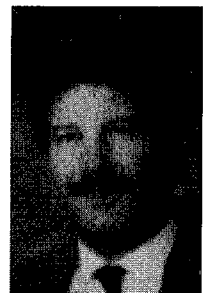
WE FISHED! from Yellowstone Lake to Lake Powell, we fished at dozens of places in between. Often it was just the two of us. During those trips, he would, of course, allow me to drive while he shared his driving tips. He shared his fishing tips, his humor and his wisdom. Although my dad was not actively involved in any religious organizations, he did not interfere at all or object

to the preferences of my mom or any of us children.

We had wall hangings throughout our home with the 10 Commandments and other Proverbs and Bible quotes; "Blessed are the peacemakers . . ." "A soft answer turneth away wrath," and others. In my dad's shop, he, of course, also had his own 5 x 8 cards hanging on the wall. One said, "It is better to give than to receive . . . besides its deductible." He kept another in a cabinet which said, "We will gladly extend credit to anyone over age 80 when accompanied by both parents." Finally, he had a card that said, "Leave it better than you found it."

As I grew older, I heard that latter reminder in a number of different settings and situations, "If borrowing someone else's car clean it and fill the gas tank before you return it." After camping, my scout master, would always remind us to leave the camp ground cleaner and better than we found it. I later realized this concept should not only apply to things and environments, but to people and relationships, more particularly, to our parents, spouses and children. Our parents should be better off for bringing us into this world and for investing the time, effort and money into our upbringing. It is no parents objective to raise a "bad" child. Moreover, as spouses enter into a relationship, both should be better off for having entered into that commitment. Finally, as we bring children into this world, they enter as an "empty vessel" ready to be filled. If we are not conscientious, that experience can be much like the oft quoted "garbage in - garbage out" proposition. Unfortunately, as applied to our children, they arrive here innocent, teachable and ready to be molded. Upon our passing, each of them certainly should be better than when we found them.

Aside from the priority of domestic and private life, lawyers have a bigger family. Most often, this family includes society in general, our responsibility as members of





the judiciary, officers of the court, members of the state and local bar, responsibilities to our partners or firm members, committee assignments, employees and clientele.

It is often also said of the practice of law that it is a "jealous mistress." Its demands and challenges are often overwhelming. How often do we read the discipline "corner" of the *Bar Journal* and realize that perhaps but for the grace of God "there go I." It is a big load — someone is always looking over your shoulder whether that be a client, partner, judge or jury. Finally, there is also the ever increasing scrutiny of the public. Along with the scrutiny goes the criticism. What other profession has more jokes told about it than lawyers? Who else is blamed for more ills in a variety of different ways? Lawyers unjustifiably get blamed for higher insurance premiums. We get blamed for the bad things in the country because there are too many lawyers in Congress. We get blamed for frivolous lawsuits because we attempt to use the judicial process in a way to improve product safety in our society. In deed, it may be because our training focuses on criticism of those processes and products around us that we find fault in the system but employ our criticism ultimately toward the goal of improving it. It is in fact the goal of each of us, as we practice, to right a wrong or improve the status quo.

The consequences of one lawsuit can often do more for reform than an entire ongoing legislative effort. It is lawyers who make the business world run more fairly and predictably by memorializing obligations and responsibilities. We make those at fault accountable for their wrongs through negligence law and victim restitution. We make the creators of unsafe products improve them. In our criminal law system, it is lawyers who make society safe from criminal wrong doers, while concurrently holding in check the vast power of the State from wrongfully convicting the innocent or invading those privileges granted us by the Constitution.

For thus, although lawyers are often branded as a "scourge" on society, I know that our profession forms a thin line between order and chaos; the rule of law over the rule of might and I know that our profession as a whole has consistently and perennially, on the whole, left our society and our world better than we found it.

Aside from the battlefield of pleadings, discovery, the board-

room and the courtroom, our profession seems constantly on the defense in the war of public opinion. Perhaps to some degree, we as individuals often struggle with our own opinion of the profession and its demands. Nonetheless, we should each draw strength from the fact that our profession in general is fairly generous with its time and money. We even have a term of art that describes the professional free services that we extend. Have you ever heard of "pro bono Engineers," "pro bono C.P.A.'s," or "pro bono doctors?"

Digesting, absorbing and then micromanaging each aspect of our practice and lives to make it fit and complement the completed polished project that we must inevitably deliver, is a monumental responsibility that each of us undertake and complete hourly, daily, and perpetually. It is always challenging, often exasperating and sometimes maddening; a divorce client who wants to have an evidentiary hearing over the value of a dish towel; the business client who, after violating a temporary injunction then wants to know how to placate opposing counsel and the court; the pro bono criminal defendant "who doesn't

need a lawyer," until he wants to suppress the confession that he has made after trying to "deal" his own case with the police and prosecutors.

I am often amused by other similar "war stories" from those who have practiced for decades and it is from that and my association with other attorneys that I draw strength and take pride in being a member of the Bar.

Whether it is at a time when you have just finished one of the many professional battles, have a moment while you are awaiting your time on the calendar, have a quiet moment while on your way home at night or simply watching your family play in the comfort of your home; take pride in overcoming the struggles that made you a lawyer. Remember the tedium of "required" college courses, the financial, emotional and physical drain of law school, passing the Bar, ("or Bars"), finding work, establishing a clientele, overcoming the jitters of the courthouse and striving in general toward professionalism. While you walk back through that, (if you want to relive the trauma) recalling both good and bad times and you get to today, somewhere along the mountainside climb, but maybe not yet at the top, please ask yourself quietly, somberly, if you can reach from your vantage point and extend a hand to those less fortu-

*"It is in fact the goal of each of us, as we practice, to right a wrong or improve the status quo."*

nate in our society. More particularly, those who need legal services, but who simply cannot access them because of the barrier of money. You do not have to donate money, you do not have to donate time. No one can force you to do so and no one will know if you don't. It is a personal decision, based upon personal perspective and philosophy.

Quite frankly, the recipients may not even be grateful, some pro bono clients are more critical and demanding than the paying ones. Furthermore, if you choose to help you may not even walk away with an emotional reward. There are no promises. Most likely though, you will have improved the client's life and you will have inevitably improved the fairness process of the judiciary, the role of lawyers in that process, and society in general by giving of your time, talents or money.

I began this writing with some references to my father and I did not intend it as a eulogy to him but rather because as I pondered whether or not I should participate in the Access to Justice Foundation and Justice For All campaign, he crossed my mind. He and I used to debate whether or not life was better years ago and he would always tout the "good ole days." I would always remind him that I would much rather adjust my thermostat in the mornings than get out of bed, cut kindling and start a fire to get warm. Moreover, I would simply rather go out in the garage and turn a key in order to meet my travel needs than to have to feed, harness the horses and hook up the wagon.

Because of his 8th grade education and the fact that he had mastered his work at the steel plant after 26 years, he often fondly referred to even those who had graduated from college and worked in his department as "educated fools." As I proceeded through college, he would often ask me if that was my goal and I often wondered if it was his way of employing reverse psychology to encourage me and give me one more incentive to complete school, just to spite him. He and I never discussed that in detail and I suppose that I will now never know either way, but in any event, I am glad for his sarcasm and humor. Because of that experience and his role in perhaps inadvertently encouraging my conclusion of that, he left me better than he found me. I am glad for the life he gave me. I think life is an incredibly interesting and challenging adventure and I have grown to appreciate the tremendous influence that my father's role played in my life, by the things that he said and did because each of those seemed to make me feel better and more wholesome in life.

As each of us finds a quiet moment. I hope that your individual decision regarding what effort and contribution you might make toward the betterment of others, would ultimately convince those, like my late father, that if we are indeed educated fools, that we are nonetheless, benevolent, sacrificing, educated fools.

Lawyers have not traditionally given "their alms in public;" but they have given; daily and generously. In addition to that, through the Access to Justice Foundation and the "And Justice For All," campaigns, it is hoped that we, as lawyers, as part of the judicial branch of government, as members of that larger community of society, will participate in the direction of resources toward a needy segment of our communities.

Each and any contribution will have a far reaching effect when added to the efforts of the rest of the Bar and will help to improve the demeanor of all lawyers in general. As for me, it is my firm belief that if I choose to make a contribution, either in time or money, it will improve me personally as that child of my parents whom they wanted to be good, and it will surely improve the situation of those who presently have no access to justice. Indeed by sharing that which I have, with regard to the Bar, myself, society in general and the needy in particular, I will have to some degree, left each better than I found it.

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

Attorneys are needed to contribute two hours during the next 12 months to assist elderly persons in a legal clinic setting. The clinics provide elderly persons with the opportunity to ask questions about their legal and quasi-legal problems in the familiar and easily accessible surroundings of a Senior Center. Attorneys direct the person to appropriate legal or other services. Participating attorneys are not expected to provide continuing legal representation to the elderly persons with whom they meet.

To make these clinics a permanent service of the Bar, participation from individual Bar members is essential. Any attorneys interested in participating in this rewarding, yet truly worthwhile, program are encouraged to contact: Tom Christensen or Aimee Housley at 531-8900 or 323-2242, Fabian and Clendenin, 215 South State, #1200, Salt Lake City, Utah 84111.



# ***Far Too Many Utah Crime Victims: The Results of Four Years of Unprecedented Crime Rate Increases***

*by Michael L. Hutchings and Gerald W. Smith*

Utahns are becoming the victims of crime at increased rates while the nation as a whole, has fewer crime victims. Utah's crime numbers, when compared with the nations' between 1993 and 1997, create some serious concerns about the direction of crime control in Utah. Obviously, the biggest concern centers around the increasing number of crime victims.

Members of the Utah bar should pay particular attention to these issues because they will continue to be affected by crime in various ways. First, lawyers, like all citizens, are among Utah's crime victims and they suffer along with family, friends, neighbors, co-workers and clients who may be crime victims. Second, the practice of law is affected as members of the bar assume greater caseloads as prosecutors, defense attorneys, judges, and civil attorneys in resolving legal disputes revolving around criminal behavior. Third, increased victimization will cost the attorneys of this state more money as they pay more at retail establishments, as consumers of insurance (health, property, auto, life, etc) and as future taxpayers funding more dollars to react to crime. Fifth, increases in crime may affect the image of the state as a good place to do business. As in other places in the country, crime tends to drive out business thus

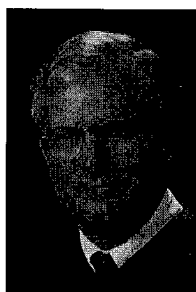
affecting the economic well being of the community. Lawyers, perhaps as much or more than any other professional group, have a stake in the economic vibrancy of a community.

## **SOME SOBERING STATISTICS**

The FBI's 1997 Uniform Crime Reports released on November 22, 1998, contains some disturbing data: Utah now is the 9th highest crime state in America - up from 21st in 1993.<sup>1</sup> Today, Utah's overall crime rate per 100,000 population is higher than New York, New Jersey, Massachusetts, Ohio, Illinois, Michigan, Missouri, Texas, California and 32 other states.<sup>2</sup> During this short four year period, Utah's overall crime rate increased by 14.5% while the nation decreased by 10.2%.<sup>3</sup>

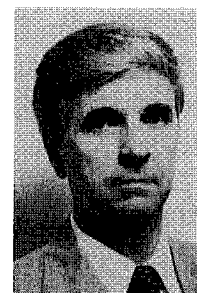
During these four years, the national crime rates outperformed Utah in every single category. While the nation enjoyed decreases in all categories, Utah suffered increases in all categories but one.<sup>4</sup> Utah now has the highest incidence of larceny theft per 100,000 population of any state in America. The following table<sup>5</sup> explains much about what has happened in Utah during the past four years:

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*He is married to the former Terry Marks. They are the parents of six children.*

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## CRIME COMPARISONS – UTAH VS. THE NATIONAL AVERAGE 1993-1997

CATEGORY	UTAH RANKING 1993	UTAH RANKING 1997	% INCREASE/ DECREASE	USA NATIONAL INCREASE/DECREASE	SPREAD
Index Crime	21st	9th	+14.5%	-10.2%	24.7
Violent Crime	39th	36th	+11%	-18.1%	29.2
Murder	44th	43rd	-22.6%	-28.4%	5.8
Rape	15th	12th	+6.5%	-11.6%	18.1
Robbery	39th	39th	+16.7%	-27.1%	43.8
Agg. Assault	40th	35th	+10.8	-13.2%	24
Property	15th	6th	+14.7%	-9.0%	23.7
Burglary	36th	21st	+12.6%	-16.3%	28.9
Larceny-theft	5th	1st	+10.8%	-4.8%	15.6
Auto theft	39th	22nd	+83.4%	-16.5%	99.9

There is some good news in this analysis. In three of the four violent crime categories (murder, robbery, and aggravated assault), Utah's crime rates are relatively low compared to the rest of the nation. However, this comparative good news is eclipsed by the fact that in each of these categories crime rates are up by significant margins while national rates are down. Forcible rape is one area of great concern. Utah currently has the 12th highest incidence of forcible rape in the nation. Forcible rape in Utah has more than doubled in the past 10 years extending from a rate of 21.7<sup>6</sup> per 100,000 in 1987 to 47.5. Today, a person is twice as likely to be raped in Utah than in New York.<sup>7</sup>

Much of the bad news also centers around Utah's property crime rates. Today, Utah is now ranked as the sixth highest property crime state in the nation. In 1993 Utah ranked 15th.. In one subcategory of property crime, larceny-theft, Utah now ranks number one - the highest larceny theft state per 100,000 population in the nation.

### RURAL CRIME

As if the news isn't already bad enough, Utah's crime rate increases are not just limited to urban Utah. Rural crime is also increasing. Consider the crime rates in the 25 counties outside of Utah's four largest metro counties (Salt Lake, Davis, Weber and Utah). Between 1993 and 1997<sup>8</sup>, the crime index for these rural counties increased 29.21% . Crime in all categories except aggravated assault<sup>9</sup> increased at high rates including murder at 52.4%, rape at 12.4%, robbery at 90.4%, burglary at 36%, larceny-theft at 31% and motor vehicle theft at 47.8%. Thus, Utah's rural crime rates are increasing at high rates. This is bad news for rural Utah.

### CRIME CLEARANCE RATES

Between 1993 and 1997, Utah law enforcement has suffered a troubling lack of efficiency in apprehending and arresting criminal suspects. Unfortunately, Utah's overall clearance rate (the percentage of cases cleared by arrest) for all index crime<sup>10</sup> fell from 29% in 1993 to 21% in 1997.<sup>11</sup> This represents a significant 28% overall reduction in efficiency for law enforcement. Utah's crime clearance rates have decreased in every individual category since 1993 including violent crime, property crime, murder, rape, robbery, aggravated assault, burglary, larceny-theft and motor vehicle theft.<sup>12</sup> Thus, not only is Utah facing increases in crime in all categories, but the efficiency of law enforcement in arresting criminal suspects is going down by substantial margins.

### AN UNDERFUNDED AND INEFFECTIVE STATE PRISON SYSTEM

A fair evaluation of corrections data suggests that Utah's prison system is underfunded and comparatively ineffective in reducing crime and preventing victimization. Our system just doesn't perform well when compared with the prison systems of other states. Here are a few of the comparison areas:

**Incarceration rates.** In spite of Utah's comparatively high crime rankings, Utah has one of the lowest prison incarceration rates in the United States. Utah incarcerates 218 prisoners per 100,000 population compared to the national average of 433.<sup>13</sup>

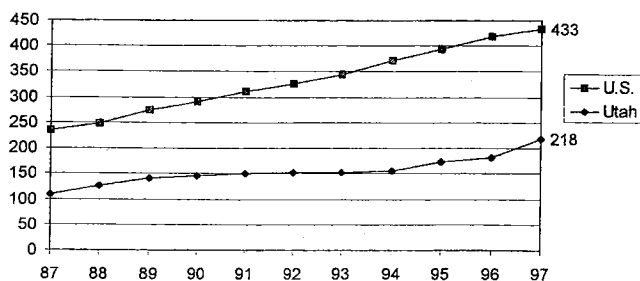
When comparing Utah's incarceration rates with those of the western states combined, Utah incarcerates criminals at a rate of 61% of the average of all other western states, (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Montana, Oregon, Washington, and Wyoming).<sup>14</sup> In fact, no state in the western

*"Utah's crime rates are relatively low compared to the rest of the nation. However . . . in each of [the] categories crime rates are up by significant margins while national rates are down."*



United States has fewer prison beds per 100,000 population than Utah. And Utah now has an overcrowded prison system.

### INCARCERATION RATES: UTAH VS. US



**Prison sentence length.** In 1996, Utah had the highest average prison sentence at 132 months - nearly twice the national average.<sup>15</sup> However, Utah's average length of actual time served was 20.7 months<sup>16</sup> - only 15.7% of the average prison sentence. Utah has the lowest ratio of average time served compared with the average sentence of any state. Additionally, the average length of actual time served is dropping.

In 1995, the average Utah inmate served a sentence of 22 months. In just one year and as a result of overcrowding, the average sentence served dropped to 20.7 months.<sup>17</sup>

**Prisoners with prior felonies.** In 1996, 84.7% of prisoners admitted to

Utah prisons had a prior felony conviction.<sup>18</sup> Utah has the highest percentage of prisoners admitted with a prior felony of any state. The national average was 40.3%, approximately one half of Utah's rate.<sup>19</sup>

**Parole Violators.** In 1996, 50.7% of all persons sent to prison were parole violators.<sup>20</sup> Utah has the highest percentage of prison admissions for parole violations of any state. The national average of prison admissions due to parole violations is 18.8%, less than half the Utah rate.<sup>21</sup>

**Parolee recidivism.** Utah has the highest reported three-year recidivism rate of any state at 70%.<sup>22</sup> The national average rate of recidivism was 32.6%<sup>23</sup> - less than half of Utah's rate.

**Prison funding.** Utah spends 2.8% of its state budget on corrections.<sup>24</sup> This percentage rate is among the lowest among the fifty states and represents only 58% of the national average. The national average of prison spending, as a percentage of state budget, is 4.8%.<sup>25</sup>

### DRUGS

It has been widely reported that Utah is the third highest state in the nation for methamphetamine laboratories. Recently, Don Mandrel of the Utah DEA office stated that in 1998, approximately 365 meth labs - one for each day of the year - were found and dismantled by Utah law enforcement.<sup>26</sup> On a population basis, Utah has the highest incidence of meth labs per 100,000 population of any state in the United States.

Between 1992 and 1996, drug related case filings in Utah's District Courts have increased by over 500% and the percentage of drug related criminal cases filed in District Courts have increased from 20% in 1992 to 45%.<sup>27</sup> Thus, a greater percentage of criminal cases filed in court are drug related.

Additionally, drug dealers are allowed to proliferate with little sanction by government. An overcrowded Salt Lake County Jail ensures that drug dealers and drug users will be quickly released and allowed to return to lives of drug distribution and drug addiction and theft.<sup>28</sup>

*"Utah does not now have a comprehensive plan to reduce crime and prevent victimization by any specific percentage this year nor for any year in the future."*

There is a clear and undeniable symbiotic relationship between drug use and theft. People addicted to drugs often support their addictions by theft. Utah now has the highest incidence of theft per 100,000 population in the nation. With the proliferation of meth labs and with drug cases filed in our courts, we

conclude that Utah has serious drug problems that are not being handled properly by government or by treatment agencies.

### THE LACK OF A COMPREHENSIVE PLAN TO REDUCE CRIME PLAYING WITHOUT AN OFFENSE

Utah does not now have a comprehensive plan to reduce crime and prevent victimization by any specific percentage this year nor for any year in the future. Yes, criminal justice agencies have their wish lists but no comprehensive and coordinated plan is in place for reducing crime. The truth of the statement becomes self evident, "When you fail to plan, you plan to fail." No plan exists and no meaningful goals to reduce victimization are even being discussed. This is a glaring weakness in the whole fabric of the criminal justice system. No plan with no goals means no focused effort and accordingly, no reductions in crime. Behind each of these statistics are real crime victims who suffer because of our failure to plan.

We would liken Utah's crime efforts to the situation of a football team playing without an offense. It doesn't matter how good the

defense, you can't win the game without an offense. And the team needs a coordinated offense with a coach calling the plays and a quarterback and members of the offensive team who know the plays and who execute their respective responsibilities at the right time and in a coordinated manner. Currently, our lack of an offense is hurting everyone and while we are in the game, we are losing. We will continue to lose until we field an offense that can and will work together pursuant to a coordinated and comprehensive game plan.

### **NEW YORK CITY'S DRAMATIC CRIME RATE REDUCTIONS**

In 1992, New York City was losing its crime game. It, too, lacked a plan to attack crime. New York City, at that time, was a comparatively unlivable place where crime proliferated. Businesses were moving out, tourists were staying away, the subways and public places were havens for theft, drug dealing and assorted forms of crime.

Then, a new coach came on the scene in the form of Mayor Rudolph Giuliani.

He was committed to significantly reduce crime and victimization. He had a plan and began to coordinate the offense. A comprehensive plan with realistic goals was implemented. Policies changed and government was harnessed in pursuit of the goal - real reductions in crime in all categories by specific percentages in New York City. Government began working like a business in handling crime and criminals. Typical government with its bureaucracy and pat excuses for bad performance became unacceptable. Government began to efficiently pursue the goal. Local governmental leaders and bureaucrats were empowered, creativity was rewarded and red tape cut. New York City rapidly began to change and win its crime game.

What does New York City look like today after 5 years in pursuit of its new goal? Crime has been cut in all categories by approximately 50%. Imagine, 50% reductions in the number of murder, rape, robbery and assault victims. New York also reduced its property crimes by approximately 50% - fewer burglaries, auto thefts and all forms of larceny theft.

As a result of these efforts, there are fewer crime victims, the city is much more livable, new businesses have been created, lost jobs have been restored and tourism has reached an all time high. Today, New York City is not a perfect place, but is much safer, cleaner and livable because of goals that a visionary

political leader implemented with a realistic comprehensive plan for success. Today, New York City has an overall crime rate one half that of Salt Lake City. A woman's chances of rape are twice as high in Salt Lake County than in New York City. Today, New York state is the 35th highest crime state in America compared to Utah at ninth. Clearly, New York is winning its crime game and all New Yorkers are the beneficiaries.

### **LET'S DREAM A LITTLE - WHAT A 50% REDUCTION IN CRIME WOULD MEAN TO UTAH'S QUALITY OF LIFE**

What if Utah really desired to put on an offense and win its crime game? Assume that Utahns decided to significantly reduce crime and that they were willing to really put on a top notch comprehensive offense. Realistic goals would be set with a game plan for achieving each goal. The crime team would work diligently to reduce crime in Utah by 50% in five years. Each city and county would be asked to be part of the team and to put together their own detailed local crime reduction plans. These

*“... [D]ecision making and goal setting is fundamental to achieving any lasting reductions in crime and victimization . . . .”*

plans would be correlated into a workable, comprehensive statewide game plan and would be realistic, specific, and measurable. Every program and every funding request in criminal justice would be evaluated in light of the game

plan. When each program comes up for approval and funding, the fundamental question must be answered “How will this program and the expenditure of this money assist in achieving the goals and policies set in the crime plan?”

This type of decision making and goal setting is fundamental to achieving any lasting reductions in crime and victimization in Utah. Reducing crime must be the number one goal. Each agency must resist the temptation to “feather its own nest” without regard of the ultimate goal - real and permanent reductions in crime and its attendant victimization.

Assume for a moment that Utah was successful in formulating workable plans to achieve 50% reductions in all major categories of crime. What would be the results of such dramatic reductions in victimization?

After 5 years, there would be 32<sup>29</sup> fewer annual homicides, 488 fewer annual rape victims, 704 fewer annual robbery victims, 2,221 fewer annual aggravated assault victims, 9,167 fewer homes and businesses burglarized each year, 44,545 fewer annual larceny-theft victims and 4,572 fewer cars being stolen each and every year. The number of fewer crime victims is most impressive! Imagine, nearly 3 fewer murders each month, 9

fewer rapes each week, nearly 2 fewer robberies per day, 6 fewer aggravated assaults per day, 25 fewer burglaries per day, and 244 fewer thefts each and every day. Imagine the impact of such reductions on the quality of life of the people of Utah! Consider the reduction in blood, sweat and tears, significantly less misery and pain, huge savings in medical and mental health assistance, the financial savings, lower insurance costs, the savings in time away from work and family, the savings in law enforcement, prosecution, judicial and incarceration costs, etc. - all real costs associated with crime! These goals are truly worthy of pursuit. Can there be a more laudable goal for government than the reduction of criminal victimization by 50% over a 5 year time frame. New York City and other jurisdictions today are in the game and are winning. We too can win the game if we have the desire to play to win. The stakes are very high. Reducing victimization in the lives of as many Utahns is critical. So what's holding us back from putting together a comprehensive plan to win?

#### IMPEDIMENTS TO CHANGE

We believe that there exist many impediments to change that must be overcome in order for real crime reductions to be implemented in Utah. Among those impediments are these four:

##### 1. A lack of knowledge about the

**problem.** Many are not aware of how Utah compares to other states in relation to crime and what is really happening with our crime rate increases. For various reasons, we tend to think that Utah must be better than other states in comparing crime rates. However, more and more Utahns are becoming aware that crime problems exist and that there is more victimization than ever before.

##### 2. A lack of confidence that government can reduce

**crime.** Some citizens lack confidence that government can field an effective offense and win the game. This is understandable given Utah's most recent history of performance. However, the truth is that government can make a significant difference in crime reduction. New York City and other jurisdictions have proved this point very effectively. Other jurisdictions have accomplished real and substantial crime reductions in all categories by implementing a business like approach to crime and by applying correct principles that really work. Even, the nation as a whole reduced crime by 10.2% between 1993 and 1997. The good news is that government can do much about crime if its leaders and citizens are determined to reduce crime by

setting goals and implementing policies that really work.

**3. Making crime reduction a priority.** Crime reduction must become a priority before any meaningful plan is implemented. Leaders need to make crime reduction one of their highest priorities. The polls consistently rate crime as a very high priority for the public at large. Our leaders can and should lead out in this important area.

**4. Funding.** It is difficult to fund crime reduction with so many other demands for government funding as well as the demand to keep taxes down. Real crime reductions will cost money in the short term. However, crime reduction is a good investment. Crime reduction is much less expensive than allowing crime to proliferate. By allowing more Utahns to become the victims of crime, we allow the imposition of an arbitrary and a terrible hidden misery tax. A measurement of this hidden and arbitrary misery tax is reflected by the crime rates. In reality, our crime rates are a misery index of the effects of crime upon the people. Each new crime victim suffers the imposition of this terrible, hidden and arbitrary misery tax. That victim's quality of life suffers as well as the quality of life of the whole community.

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With each unnecessary crime, the hidden misery tax is arbitrarily imposed upon its individual victims and their families, associates and friends in the form of increased pain and suffering,

justifiable feelings of vulnerability, the inconvenience of lost time away from work and family, lost wages, increased medical and counseling expenses, actual monetary losses and increased insurance claims and costs, etc. The reality of funding crime reduction is this: the Utahns are already paying a hidden, arbitrary and a more frequently imposed misery tax as government becomes less effective in curbing criminal behavior. This misery tax is costing all of us dearly. This must stop.

#### CONCLUSION

Utah has far too many crime victims. Crime rates are increasing while national rates are decreasing. Lawyers, as well as all Utahns, unnecessarily suffer because of it. Utahns are now paying quite a price for crime and the costs are increasing. Utah is not playing the crime game to win and the stakes are so very high. Reducing crime and victimization must be the number one goal of government and comprehensive plans should be created and implemented. Government can make a difference and reduce crime if it has will to do so.

<sup>1</sup>Compare Crime in the United States 1997, Uniform Crime Reports, Federal Bureau of Investigation, U.S. Dept. of Justice, Table 4, pp. 68-75 with Crime in the United States 1993, Table 4, pp.60-67.

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>This table was created by comparing table 4 found in the 1997 and 1993 versions of Crime in the United States, *supra*.

<sup>6</sup>See Crime in the United States 1987, Uniform Crime Reports, Federal Bureau of Investigation, U.S. Dept. of Justice, Table 4 at p.51.

<sup>7</sup>Crime in the United States 1997, *supra* at Table 4.

<sup>8</sup>These rates are calculated by comparing the data in Table 5 of Crime in the United States 1993, *supra*, at 77 with Table 5 of Crime in the United States 1997, *supra*, at 85.

<sup>9</sup>Aggravated assault reduced during this time frame by 21.8%.

<sup>10</sup>Index crime is defined by the FBI as the combination of the following crimes: murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft and arson. See Crime in the United States 1997, *supra*.

<sup>11</sup>See Crime in Utah 1997, Bureau of Criminal Identification, Utah Dept. of Public Safety. This publication does not provide a clearance rate of the total of all Part 1 index crimes. This rate was calculated by dividing the sum of all Part 1 crimes cleared for 1993 and 1997 respectively into the sum of all Part 1 crimes for 1993 and 1997. The raw figures were obtained in Crime in Utah 1997.

<sup>12</sup>See Crime in Utah 1997 and 1993, *supra*.

<sup>13</sup>Camille Graham Camp and George M. Camp, The Corrections Yearbook 1997, Criminal Justice Institute, Inc., p. 10.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.* at 40.

<sup>16</sup>*Id.* at 46.

<sup>17</sup>The Corrections Yearbook 1996, *supra*, at p.44.

<sup>18</sup>*Id.* at 40.

<sup>19</sup>*Id.* at 41.

<sup>20</sup>*Id.* at 40.

<sup>21</sup>*Id.* at 41.

<sup>22</sup>*Id.* at 46. It should be noted that California has a 57% two year recidivism rate which, if studied, could possibly be over Utah's 70% rate over a three year period.

<sup>23</sup>*Id.* at 47.

<sup>24</sup>*Id.* at 70.

<sup>25</sup>*Id.* at 71.

<sup>26</sup>Testimony before a caucus of state Democratic Senators and Representatives at the Utah State Capitol, December 30, 1998.

<sup>27</sup>See Senator Orrin G. Hatch, A Summit on Crime - Coming Together for Utah's Future, published June 30, 1997, Appendix B entitled "Utah Drug Statistics."

<sup>28</sup>See Michael L. Hutchings, "Another Vietnam: Salt Lake's War on Crime", *Utah Bar Journal*, November 1996 at 33 and Michael L. Hutchings and Gerald W. Smith, "The Good, the Bad and the Ugly: Crime and Punishment in Utah", *Utah Bar Journal*, September 1997 at 23.

<sup>29</sup>In 1998, Utah had 65 homicides. See *Deseret News*, January 2, 1998, p. B-1.

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# The General Aviation Case

by Wendell K. Smith, Esq.

The elements of tort law applicable to claims and litigation arising from aircraft accidents are the same as in any other negligence or product liability case. However, without a substantial knowledge of aviation it can be difficult to assess what duty was owed by which persons and to whom, whether that duty was breached, and whether the breach was the proximate cause of the damages. Likewise, without a substantial knowledge of aircraft structures, flight controls, engines, aircraft systems, and instruments, it is difficult to assess whether an aircraft or aircraft component was defective and whether it was unreasonably dangerous.

Does this mean an attorney without a background in aviation should not take an aviation case? Not necessarily. It means that you are going to have to spend a lot of time learning about aircraft and aviation terminology. It means you are going to need a firm grasp of the facts and you are going to have to rely heavily on experts. One note of caution. Before taking an aviation case read Rule 1.1 of the Rules of Professional Conduct. This Rule states that a lawyer shall provide competent representation to a client and shall possess the legal knowledge and skill reasonably necessary to provide that representation. This does not mean you cannot take an aviation case without a substantial knowledge of aviation. It does mean that you can accept an aviation case provided the requisite level of competence can be achieved by reasonable preparation.

So, what is the first step? It is imperative that you know all the facts and that you learn them as soon as possible. How do you get the facts? Don't wait for the National Transportation Safety Board (NTSB) report. It can take over a year for this report to become available. By then, a lot of evidence will be destroyed, altered, or lost, and the key witness may be dead or have disappeared. You need to conduct your own investigation and you need to do it as soon as you can gain access to the wreckage and the witnesses. How do you conduct an investigation? Hire an expert. Let the expert conduct the investigation. Personal participation in the investigation is essential if you are going to gain a complete understanding of the facts. You will learn more by one visit to the accident site, or by viewing the wreckage, than you can learn in man hours of reading reports and statements and viewing photos.

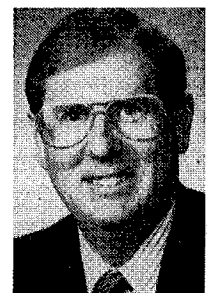
The investigation of general aviation aircraft accidents falls under the jurisdiction of the NTSB. Most fatal general aviation accidents are investigated by the NTSB. However, the NTSB may

delegate the investigation of these accidents to the FAA. Less serious, non mid-air accidents are generally delegated to the FAA for investigation. A side note, if you have a client who was involved in an aviation accident, remember the FAA wears two hats. They may be conducting a safety investigation, they also have jurisdiction to take certification action against airmen who violate a Federal Aviation Regulation (FAR). The unwary pilot may help the FAA in the safety investigation only to find himself or herself a respondent in an adverse action by the FAA.

The NTSB will not permit attorneys or their representatives to participate in an investigation. However, the NTSB will provide you with the names of the witnesses the investigator has interviewed. The NTSB will also grant access to the wreckage when it has been released by the investigator. Access to the wreckage is generally obtained by coordination with the insurance carrier.

It is important that you take the statements of witnesses as soon as possible. Witness testimony is perishable evidence. It is not necessary to obtain permission of the NTSB to interview witnesses. The best place to interview a witness is at the spot where the witness saw the accident. This will permit the witness to describe the events in relation to the surrounding terrain, buildings, etc. The decision as to whether to take witness statements in the presence of your expert depends upon whether you want to protect the statement from discovery. The advantage of having your expert present is that the expert can guide you in what

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questions to ask. The questioning of the witness in this manner will probably give you more information than if the expert is not present. The disadvantage is that the presence of the expert may constitute a waiver of attorney work product privilege if your expert is designated to testify at the trial as an expert witness. If you elect to have your interview notes protected as attorney work product, you should conduct the interview alone based upon guidance from your expert as to the questions to be asked and the information to be obtained from the witness.

Your expert should then conduct an investigation to determine the cause of the crash. The expert should also determine whether any Federal Aviation Regulations (FAR's) may have been violated by the manufacturer, aircrew, maintenance provider, owner, or air traffic controller.

The NTSB does not always have all the answers. Therefore, if you wait for the NTSB report you may be disappointed. I recently investigated the crash of a DC-3 with my expert. Our investigation identified the cause of the fire that caused the crash. The NTSB report indicated the cause of the fire was unknown.

Another reason not to rely on the NTSB report is that the probable cause determination is inadmissible into evidence at trial by statute. Additionally, NTSB investigators may not be called as witnesses at trial and they may not render opinions as to the cause of the crash. The NTSB permits the deposition to be taken of their investigators. However, the testimony of these investigators is limited strictly to the facts. What did they see, hear, touch, taste, smell, and who did they interview? These depositions may be used at trial.

What is the next step? Once you have all the facts, the next step is to identify the possible defendants and formulate a theory of liability. I once worked on a case stemming from the crash of a Saber Liner in Pennsylvania. The aircraft was landing at an airport that was located atop a mesa with a drop off of about 300 feet on each end of the runway. After touching down, the aircraft failed to stop and went off the end of the runway. Everyone aboard was killed by the post-crash fire. It was determined that the aircraft failed to stop because the crew had turned off the electric hydraulic pump in flight and had failed to turn it on prior to landing. Consequently, when the hydraulic pressure in the accumulator was depleted they had no brakes. The aircraft was not equipped with an engine driven hydraulic pump.

Who would be the defendants in this crash and what theories of liability would you use? The parties that were obviously negligent were the cockpit crew. The pre-landing check list requires that the hydraulic pump be turned on prior to landing. In fact,

company policy stated that the pump was not to be turned off in flight. The aircrew was negligent in disregarding company policy and failing to follow the pre-landing check list. What about the pilots? Is there any theory of liability that could be used to recover for their wrongful deaths? What about product liability? Was the design of this aircraft defective by not having an engine driven hydraulic pump? If so, did this design defect render the aircraft unreasonably dangerous? Was pilot error induced by the design of the aircraft hydraulic system? These issues were not litigated, however, in my opinion the families of the crew could have recovered under this theory of liability.

Another theory of liability that can be used in a large number of aircraft crashes is Negligence Per Se. This is because an FAR is generally violated in connection with an aircraft accident. It can generally be shown that there was a causal connection between the violation of the FAR and the accident. In other words, if it can be shown that the harm that resulted from the violation of the FAR was the kind of harm the FAR was designed to prevent, you have a case of Negligence Per Se.

Due to the total destruction that sometimes accompanies aircraft accidents, it is not always possible to determine the exact cause. In situations of this nature Res Ipsa Loquitur can be used as a theory of liability. An example of where this was used successfully was

the crash of an Air Force C-135 that had been extensively modified by a government contractor. Shortly after the modification the aircraft disappeared in the South Pacific. The court allowed recovery under the theory of Res Ipsa Loquitur.

Sometimes liability can rest with the FAA. This might be the case if the pilot of the aircraft was given incorrect weather information by the FAA prior to the flight or if an air traffic controller provided inaccurate information to the pilot. For example, I once litigated a case where the air traffic controller became confused as to which aircraft he was talking to and provided traffic advisories to the pilot that caused the pilot to look in the direction opposite to the conflicting traffic. A mid-air collision resulted.

In summary, an aviation case requires a high degree of specialized knowledge. However, with proper preparation and a good expert you can learn what you need to know to handle an aviation case. Investigate, know the facts, and develop a theory of liability based on those facts. If you would like assistance with your case, or need additional information on how to obtain NTSB reports and locate experts, give me a call. If you need a California attorney I recommend Phillip J. Kolczynski in Irvine, CA with whom I consulted in the preparation of this article.

*"It can generally be shown that there was a causal connection between the violation of the [Federal Aviation Regulation] and the accident."*

# ***Railroads: The Lifeblood of the Nation***

*by Dennis C. Farley*

As attorneys for Union Pacific Railroad Company in the State of Utah, we did not want Commissioner David Nuffer's article "Are Lawyers the Railroad of the Future" (Nov. 1998 *Bar Journal*) to go unanswered. Although the article was intended to address the importance of technology and information in this modern era, the premise for his analogy that railroads – like dinosaurs – have "almost disappeared" is inaccurate. This is particularly embarrassing in the State which boasts of the location where the final "golden" spike driven at Promontory Point, May 10, 1869, marked the completion of the first transcontinental railroad and connected forever a nation previously divided. The birth of the railroad may have been as important to this nation as the revolutionary war and the declaration of independence. In its day, completion of the railroad coast to coast was of no less significance than landing man on the moon. Anyone interested in its history may read the story in Maury Klien, *UNION PACIFIC The Birth of a Railroad*. Mr. Klien concludes that the birth of Union Pacific Railroad constituted the birth of the American West

Mr. Nuffer's article acknowledged this great beginning; however, he sees the importance of railroads reduced to insignificant transportation of "some types of freight." It is not surprising that a profession frequently requiring air transportation to hurry from meeting to meeting, might look down upon the rail lines. People generally view themselves as the most important freight and, therefore, airlines as the highest form of transportation. It is a misperception to think that railroads are of historical significance only and that they represent nothing more than an annoyance at grade crossings and a whistling reminder of an era long past. Let us remind readers of the importance of railroads in this "modern age of technology and information."

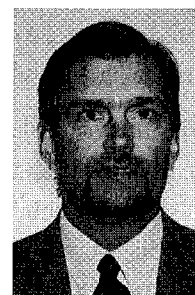
This article is entitled "Lifeblood of the Nation" because that is exactly what railroads represent in a very literal way. Rail lines are the arteries of the nation. Railroads do not produce the nation's goods, but they transport them, in the same way that the human circulatory system transports blood, oxygen and nutrients throughout the body. When the circulation system no longer operates, life ceases. While the body is healthy, we tend to ignore the fact that our heart beats and blood flows, delivering its lifesaving cargo and removing unwanted wastes. When some-

thing goes amiss, however, when a heart attack strikes, a clogged artery stops the free movement of blood, or waste cannot be removed on a timely schedule, the entire body and mind focus on resolving the problem. We delay action at our peril.

When you arose this morning to the sound of your clock radio and turned on the light, the electricity you used was generated by gigantic turbines, turned by steam from water heated by clean western coal transported from the mine fields of Utah and Wyoming by railroad. The wires and pipelines that transport your electricity, water and gas were formed from ores moved by railroad to manufacturers and then shipped by railroad again to various markets in this country and to ports for shipment around the world. The glass in your computers and plastics for fiber optic communications began as soda ash moved by railroad from Wyoming and chemicals in Texas. The food you ate began from Midwestern grain stockpiled in Nebraska and shipped by rail to be transformed into flour for bread and Captain Crunch, and again shipped by rail to your State to be distributed to local stores by trucks. The commodities that you touched today, from your computers to your cars, the lumber used to build your houses and to make the paper that you now hold, more than likely required railroad service on some portion of the journey to you. Even the space shuttle hailed as the symbol of man's greatest achievements and possibilities was placed in space by rocket engines transported by this nation's railroads. The reason the federal government intervenes to end

*Dennis C. Farley is a General Attorney for Union Pacific Railroad Company in Salt Lake City, Utah, where he has been employed since graduating from the University of Utah College of Law in 1979 where he served as a member of the Law Review. He received his B.S. in Psychology cum laude from Brigham*

*Young University in 1976. His general law practice includes representing Union Pacific in a variety of legal matters including environmental, legislative, real estate, contracts, freight collection, and highway grade crossing issues.*



railroad strikes is because any interruption in railroad service is considered to be a national emergency.

Over 70 trains were moved through your communities by Union Pacific today – about three trains every hour – each averaging over one hundred cars, one and one-half miles long. Calculate the number of trucks it would take to transport that amount of tonnage over your public road system and the resulting road damage. Trains are safe, efficient, and environmentally friendly. The hazardous wastes and garbage you generate are moved by rail to landfills and disposal facilities. More freight is moved today by railroad than ever before, but you declare railroads to be a dying breed? And as your roads become more and more crowded, society again looks to railroads to provide its commuter needs. Were you aware that Union Pacific hired 6,500 additional employees this year and recently announced its intention of hiring 60,000 employees over the next twelve years to meet the growing need for train operators? In 1997-98, Union Pacific will have spent \$3.6 billion on capital improvement projects. Does this sound like a dying industry? Perhaps your declaration of the death of railroads is premature and somewhat exaggerated.

From single to double main line tracks, to triple and quadruple tracks under construction in some locations, the demand for rail service has outstripped the railroad industry's ability to supply transportation. As the merger of Union Pacific and Southern Pacific combined two railroad systems into this nation's largest railroad in 1996, Union Pacific experienced congestion problems in Texas and the Gulf Coast which soon was felt throughout the country, impacting the health of the nation's economy. This was not a collapse of the entire railroad system, it was merely a minor ailment – a cold, if you will, or a potential stroke – that demanded immediate attention. Union Pacific has addressed these problems and is well on its way to full recovery, but during its convalescence the entire nation suffered. The service difficulties of 1997-98 have demonstrated irrefutably that rail service is vital to the national economy.

The implication that the rail industry is somewhat lacking in technological advances is equally in error. From a computerized dispatch center in Omaha, Nebraska, that electronically monitors the movement of hundreds of trains, to a national customer service center in Saint Louis, Missouri, that tracks over 300,000 railcars on the Union Pacific system on a daily basis and provides the information to customers over the internet, to research into positive train control to prevent collisions and space age technology to pinpoint the exact location of trains at

any moment by satellite, railroads continue to explore new and innovative ways of meeting the needs of customers and the safety of employees.<sup>1</sup>

So, are railroads dead or dying? If so, we have more to be concerned about than how quickly information can be sent around the world. Can the head really say to the heart and its intricate circulatory system, "I have no need of thee?" Are Lawyers the Railroad of the Future? Our hope is that someday lawyers will provide the same type of quiet, efficient, and essential service that railroads provide now. When that time comes, we will not need to worry about lawyer jokes because we will be viewed by society as offering an essential public service to keep this great body politic healthy and prosperous. But if the railroads of this country – as you mistakenly assert – are on their death beds, when the final engine bell tolls you need not ask for whom, it will toll for thee.

<sup>1</sup>For anyone interested in learning more about the Rail Industry, feel welcome to visit Union Pacific's web site at <http://www.uprr.com/> or the American Association of Railroads at <http://www.aar.org/aarhome.nsf>.

## ROCKY MOUNTAIN MINERAL LAW FOUNDATION

The Rocky Mountain Mineral Law Foundation is sponsoring two international institutes in the spring of 1999.

**Oil and Gas Development in Latin America,** March 17-19, in Caracas, will examine the controlling laws and regulations governing many exciting developments currently underway in the Latin America oil and gas industry from a practically-oriented operational perspective. A distinguished faculty from throughout the U.S., Latin America, and Canada will discuss a broad range of issues confronting foreign, state-owned, and domestic energy companies with operations in both the upstream and downstream sectors of the oil and gas industry.

**International Resources Law and Projects,** April 26-27, in Santa Fe, will focus on the development of resources law projects around the globe. The entire seminar will be based around an authentic case study from the natural resources industry. Conference participants from throughout the world are expected to join an expert faculty for this unique forum to exchange ideas and suggestions.

For additional information, contact the Foundation at 303-321-3100.



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UTAH STATE BAR**

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

## *Discipline Corner*

### **ADMONITION**

On November 11, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct.

A client retained the attorney to defend him in a divorce action. The attorney did no work on the case, and a default judgment was entered against the client. The client repeatedly attempted to communicate with the attorney, but these attempts were usually not successful. The attorney failed to have the default judgment set aside.

On October 8, 1998 a Screening Panel of the Ethics and Discipline Committee heard the matter and determined that an admonition was appropriate discipline.

### **ADMONITION**

On November 11, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence), 1.4 (Communication), and 1.5 (Fees) of the Rules of Professional Conduct. The attorney was also ordered to pay restitution in the amount of \$500.

A client retained the attorney to represent her in setting aside a Certificate of Default in a divorce action. The client paid the attorney a \$500 retainer fee. Although time was of the essence, the attorney did not perform the work. The attorney failed to adequately respond to communications from the client.

On October 8, 1998 a Screening Panel of the Ethics and Discipline Committee heard the matter and determined that an admonition was appropriate discipline.

### **ADMONITION**

On November 24, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), and 1.3 (Diligence) of the Rules of Professional Conduct. The attorney was also ordered to pay restitution, to attend eight hours of Estates and Trusts CLE, and to attend the Utah State Bar's Ethics School. The Order was based on a stipulation entered into by the attorney and the Office of Professional Conduct.

Longstanding clients of the attorney retained him to advise them concerning their estate plan. The attorney prepared various documents for the clients, including a trust document. A provision of the trust was in conflict with another provision, and was inconsistent with what the clients specified that they wanted. The conflict resulted from similar provisions in two places, and after changing one provision to comply with the clients' wishes, the other provision was overlooked and not changed. Additionally, the attorney failed to record a quitclaim deed by which the clients transferred some property to the family limited partnership.

Finally, the attorney delayed opening the account for the Trust until nearly five weeks after the money was transferred to him. The attorney was out of town for the first two weeks of that period. The attorney did not use any portion of the money for any personal purpose.

### **ADMONITION**

On November 30, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.8 (Conflict of Interest: Prohibited Transactions) of the Rules of Professional Conduct.

The attorney was retained by a client to represent him in the resolution of a divorce action with no written fee agreement for the representation. Thereafter, a dispute developed between the attorney and the client as to what was to be the fee for the legal services.

During the attorney's representation of the client, they discussed a certain piece of real property. The client owned a parcel of land that he had inherited from his mother prior to his marriage. The attorney allegedly told the client that in order to protect the land from any claims that might be made by the client's wife, he should convey the property by deeding it to a corporation that would be owned by the attorney and the client.

In the agreement to acquire and develop the real property, the attorney entered into a business transaction with a client. The terms of the transaction were not fully disclosed and transmitted in writing to the client in a manner that could be reasonably understood by the client and the client was not given a reasonable opportunity to seek the advice of independent counsel.



## ADMONITION

On December 17, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence), 1.4 (Communication), and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar's Ethics School. The Order was based on a Stipulation as to Findings of Fact, Conclusions of Law and Recommendation of Discipline.

Commencing in 1995, the attorney represented a client in a bankruptcy proceeding, an adversary proceeding ancillary to the bankruptcy proceeding, and a separate civil action relative to these other two matters. In 1997 the attorney left the law firm he was employed by and opened his own practice. He took the client's matters with him and continued to represent the client. Thereafter, the attorney failed to act with reasonable diligence and promptness in representing the client. The attorney also made material misrepresentations to the client regarding the status of the case.

The Office of Professional Conduct determined that the attorney was experiencing extreme family problems that substantially affected his conduct in this matter, and were sufficient to warrant consideration as a mitigating factor within the meaning of Rule 6.3 of the Standards for Imposing Lawyer Sanctions.

## PUBLIC REPRIMAND

On November 25, 1998, the Honorable William A. Thorne, Third Judicial District Court, entered an Order of Discipline: Reprimand, reprimanding Edward D. Flint. Flint was also ordered to pay \$2,000 restitution and to attend the Utah State Bar's Ethics School. The Order was based on a stipulation entered into by Flint and the Office of Professional Conduct.

A client retained a service group (the "Group") to represent him in connection with an immigration matter. The Group employed Flint. Flint was present during some of the client's meetings with the Group. The client paid the Group an attorney's fee of \$680. The client was given a "law card" stating that Flint was his attorney. No meaningful legal services were provided to the client. The client was misinformed by the Group as to what he could reasonably expect to achieve in the immigration proceedings.

Another client retained the Group to file a political asylum application on his behalf. The retainer agreement between the client and the Group identified Flint as the client's attorney. The case was delegated to another attorney licensed in the State of Utah who was employed to assist with the immigration cases. No

meaningful legal services were performed on the client's behalf.

A third client retained Flint to represent him in a professional license forfeiture matter. Flint failed to timely file a request for reconsideration with the licensing board on the client's behalf. Flint received \$3,000 for representing the client in the licensing matter. On November 11, 1997, the client was awarded \$2,000 from Flint by the Utah State Bar's Fee Arbitration Committee after a non-binding fee arbitration hearing.

## INTERIM SUSPENSION

On November 24, 1998, the Honorable Robin W. Reese, Third Judicial District Court, entered an Order of Interim Suspension, suspending Charles C. Brown pending the outcome of disciplinary proceedings. The Order was based on a stipulation entered into by Brown and the Office of Professional Conduct.

On August 6, 1997, the Bar filed a formal complaint against Brown alleging that he committed numerous violations of the Rules of Professional Conduct. The matters raised in the complaint are still outstanding. In approximately the summer of 1998, Brown became incapacitated and unable to practice law. Brown has been intermittently hospitalized under a doctor's care, and is presently unable to practice law.

Charles C. Brown is not in any way related to Charles R. Brown, the president-elect of the Utah State Bar.

## INTERIM SUSPENSION

On December 10, 1998, the Honorable Darwin C. Hansen, Second Judicial District Court, entered an Order of Interim Suspension, suspending David Young Payne pending the outcome of disciplinary proceedings.

The order was based on a certified judgment of Payne's guilty plea to two counts of knowingly and intentionally attempting to give false or inconsistent material statements in depositions and trials at his two divorce proceedings. The Bar argued that based upon Payne's plea he has been convicted of a crime which reflects on his honesty, trustworthiness or fitness as a lawyer. Based upon this, the judge agreed with the Bar that Rule 19 (Lawyers Convicted of a Crime) of the Rules of Lawyer Discipline and Disability is applicable.

## SUSPENSION

On December 4, 1998, the Honorable Tyrone E. Medley, Third Judicial District Court, entered an Order of Suspension suspending Lowell V. Summerhays from the practice of law for twelve months for violation of Rules 1.15(a) and (b) (Safekeeping Property), 5.3(b) (Responsibilities Regarding

Nonlawyers Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Ten months of the suspension were stayed and Summerhays was placed on ten months of supervised probation, following two months of suspension. Additionally Summerhays is required to attend the Utah State Bar Ethics School. The Order was based on a Stipulation to Discipline by Consent: Suspension entered into by Summerhays and the Office of Professional Conduct ("OPC").

On December 10, 1996 Summerhays issued a disbursement letter to his client. In the letter he stated that a portion of the settlement proceeds was forwarded to the client's physician for medical services. The physician was in fact not paid. Because the physician was not paid for his services, he initiated collection efforts against Summerhays's client through a recovery service. When the recovery service contacted the client, she informed them by letter that the physician should have been paid on or about December 10, 1996.

The OPC's investigation determined that the physician was not paid for services rendered to Summerhays's client and that a paralegal from Summerhays's office attempted to mislead the physician into believing that the client's bill had been paid. Summerhays paid the physician after the OPC informed him that it had begun an investigation.

In another matter, a surgeon operated on a client of Summerhays. The surgeon was not paid a portion of his bill for his services from the settlement proceeds Summerhays received on behalf of the client, despite the fact that Summerhays provided the surgeon a Doctors' Lien. Because the physician was unable to collect his fee from the proceeds of the client's settlement, the surgeon initiated collection action against the client. On March 16, 1998, the surgeon spoke with Summerhays regarding the past due bill. The following day, Summerhays visited the surgeon and presented him a check for the outstanding balance. The check was returned for insufficient funds. Following the return of the check because of insufficient funds, the surgeon contacted the OPC which initiated an investigation into Respondent's failure to honor the Doctor's Lien. In April of 1998, Summerhays paid the surgeon the balance of the outstanding debt.

#### **SUSPENSION**

On December 16, 1998, the Honorable John A. Rokich, Third Judicial District Court, entered an Order of Discipline: Suspension suspending Don L. Bybee from the practice of law for eighteen months for violation of the terms of his probation.

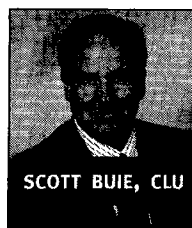
The Court conducted a hearing on January 16, 1998 wherein Bybee and the Office of Professional Conduct ("OPC") entered

into a Stipulation Regarding Discipline by Consent ("Stipulation"). In the Stipulation, Bybee agreed to accept an eighteen-month stayed suspension, and was placed on supervised probation for eighteen months for his misconduct. Bybee agreed that if he failed to fulfill the conditions of his probation, the stay would be lifted and he would serve the entire eighteen months of actual suspension. On January 16, 1998, the Court entered an Order of Suspension and Probation incorporating the terms of the Stipulation.

The order required Bybee to meet monthly with a supervising attorney, to file a report every three months with the supervising attorney and the OPC regarding each of his cases, to attend the next available Utah State Bar Ethics School, and to provide the OPC with a release authorizing access to information concerning his trust account.

On August 14, 1998, the OPC filed a motion with the Court alleging that Bybee had failed to satisfactorily comply with the terms of his probation and requesting that his probation be revoked and the full eighteen month suspension imposed as agreed by Bybee in the Stipulation and as ordered by the Court.

On September 29, 1998, the Court held a hearing on the OPC's motion and concluded that Bybee failed in every respect to satisfactorily comply with the terms of the Court's Order of Suspension and Probation. The Court issued an Order of Discipline: Suspension on December 16, 1998, suspending Bybee for eighteen months with a thirty-day wind-down period as allowed under Rule 25 of the Rules of Lawyer Discipline and Disability. Bybee's suspension was effective January 15, 1999.



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## Utah State Bar Ethics Advisory Opinion Committee

The following statements of Ethics Advisory Opinions are summaries only. You [the practitioner?] should obtain a full copy of an opinion before taking any definitive action related to the subject of the opinion. Full-text copies may be obtained by subscription through the Bar offices; on the Bar's website at [www.utahbar.org](http://www.utahbar.org); or from on-line services such as Westlaw.

### OPINION NO. 98-12

**Question:** When a lawyer becomes aware that another lawyer has illegally used or possessed controlled substances, under what circumstances must the first lawyer report such conduct to the Utah State Bar?

**Opinion:** A lawyer is required to report to the Utah State Bar any unlawful possession or use of controlled substances by another lawyer if two conditions are satisfied: (1) the lawyer has actual knowledge of the illegal use or possession, and (2) the lawyer has a reasonable, good-faith belief that the illegal use or possession raises a substantial question as to the offending lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. A lawyer is excused from this reporting requirement only, if (i) the lawyer learns of such use or possession through a bona fide attorney-client relationship with the offending lawyer, or (ii) the lawyer becomes aware of the unlawful use or possession through providing services to the offending lawyer under the auspices of the Lawyers Helping Lawyers program of the Bar.

### OPINION NO. 98-13

**Issue:** What are the ethical obligations and considerations that govern a law firm's acceptance of a financial interest such as stock in a client company in return for performing legal services for that company?

**Opinion:** A law firm's acquisition of a financial interest such as stock ownership in a client, whether the investment is made directly by the law firm or through a blind trust, holding company, investment partnership or other investment vehicle, and whether the interest is acquired in exchange for legal services or whether the client's primary attorney is involved in investment decisions concerning the client's stock, is not per se unethical. However, in all such arrangements, counsel must comply with the requirements of Rule 1.5, 1.7(b) and 1.8(a) of the Utah Rules of Professional Conduct.

### OPINION NO. 98-14

**Issue:** Is it unethical for a lawyer in a divorce case to advise a client that she may obtain a protective order *pro se* or to allow the client to appear *pro se* in the protective-order case, while the lawyer continues to represent the client in the divorce proceeding?

**Opinion:** Because a protective-order proceeding is a separate legal action from a divorce proceeding and is clearly delineated as such by state statute, an attorney who represents a client in a divorce proceeding is not automatically counsel for that client within the protective-order proceeding. Further, an attorney representing a client in a divorce proceeding is not ethically bound to represent the same client in a protective-order proceeding filed between the same parties. The lawyer may advise the client of her right to obtain a protective order and to do so *pro se*.

### 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. Seventy-seven opinions were approved by the Board of Bar Commissioners between January 1, 1988 and October 30, 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: Christine Critchley  
645 South 200 East #310, Salt Lake City, Utah 84111.

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Please allow 2-3 weeks for delivery.

#### OPINION NO. 98-07

*Issue:* May the lawyer for the plaintiff in a personal-injury case directly contact the adjuster for defendant's insurer without first obtaining the consent of the defendant's attorney?

*Opinion:* Such a contact is improper if the lawyer for the plaintiff knows or reasonably should know that the insurer is represented by counsel in the case, either when the insurer has separate counsel or when it is represented by the same counsel as defendant. If defendant's attorney does not also represent the insurer, the plaintiff's attorney need not obtain the consent of defendant's attorney to contact the insurer or its attorney.

### ***Lawyers Lounge Now Available in Scott M. Matheson Courthouse***

The newly furnished lawyers' lounge in the Scott M. Matheson Courthouse is now open and available to members of the Utah State Bar. The lounge is located just west of the state law library on the first floor and is indicated on the directory as room #W174. The room has a couch, upholstered chairs, a conference table and various chairs with a desk and phone. The courthouse welcomes usage by lawyers in this room which has been dedicated to and furnished specially for members of the Bar. The area is well-suited for quiet conversation and is intended to serve as a more private place in the public building.

Bar members are encouraged to take advantage of the lawyers' lounge when visiting the building.

### ***Navajo Nation Bar Association Announcement***

The Navajo Nation Bar Association announces its March NNBA bar examination scheduled for Saturday March 20, 1999. You can obtain an application packet from the Navajo Nation Bar Association office for \$10.00. Please send check or money order payable to the Navajo Nation Bar Association, P.O. Box 690, Window Rock, Arizona.

For further information, please contact Andrea Becenti, Executive Director NNBA, at (520) 871-2211, or FAX: (520) 871-2229.

### ***Food and Clothing Drive Participants and Volunteers***

We would like to thank all participants, volunteers and the executives of the Utah and Salt Lake County Bar Associations for their assistance and kind support in this year's Food and Clothing Drive. Through these persons' efforts it gets better every year. Over four truck loads of food and clothing and several thousand dollars were contributed and distributed to the participating shelters. The bulk of the clothing was delivered to the Rescue Mission, which has a policy of promptly distributing donated items to homeless families and individuals. The generosity of all in contributions in kind and effort reflected the spirit of Christmas.

Leonard W. Burningham  
Toby Brown  
Sheryl Ross

### **West Group Teams with Adobe to Support Internet-Based Filing of Court Documents**

*Combination of West Group's WestFile Service and Adobe Acrobat is an important step  
in moving the paper-intensive legal industry from costly manual filing to electronic filing*

West Group and Adobe Systems are teaming up to enhance the **WestFile Service™**, a Web-based filing system that enables legal professionals to send court documents via the Internet. Adobe Systems is the newest participant to join an impressive alliance of businesses, including West Group, IBM, VeriSign and SCT Government Systems to offer the **WestFile Service** ([www.westfile.com](http://www.westfile.com)). The **WestFile Service** replaces paper-based filing systems with electronic files online delivery. Electronic filing is faster and more efficient, and can significantly reduce the expense of filing court documents.

Court filings typically range in length from 2 to 20 pages and must be submitted whenever attorneys initiate cases, change court dates, subpoena witnesses, submit new evidence or take other actions. Now with the Web-based **WestFile Service**, attorneys will be able to submit court filing electronically in **Adobe Portable Document Format (PDF)**. And for the nation's courts, this means that rooms full of paper can be converted to digital files for archiving, and new filings can be processed electronically. The result is less administrative overhead, easier document management and the ability to distribute materials faster.

# 1999 MID-YEAR CONVENTION PROGRAM

## THURSDAY, MARCH 4, 1999

6:00 - 8:00 p.m. **Registration and Opening Reception**  
*Dixie Center North Lobby*

Sponsored By: JONES, WALDO, HOLBROOK & McDONOUGH

## FRIDAY, MARCH 5, 1999

7:30 a.m. **Registration & Continental Breakfast**  
*Dixie Center North Lobby*

Sponsored By: CLYDE, SNOW, SESSIONS & SWENSON  
SNELL & WILMER

8:00 a.m. **Opening General Session**  
**Welcome and Opening Remarks**

8:30 a.m. **Keynote Address: Protecting America's (1)**  
**Children - The 1998 Tobacco Settlement**  
Heidi Heitkamp, Attorney General, North Dakota  
*Ms. Heitkamp was part of the eight-member team which negotiated the \$206 billion settlement of state lawsuits against the tobacco industry, by far the largest settlement in the nation's history. The settlement is also expected to generate unprecedented attorney's fees for private law firms retained by the states to sue the tobacco companies.*

Sponsored By: LITIGATION SECTION, UTAH STATE BAR  
PARSONS BEHLE & LATIMER

9:30 - 9:50 a.m. **Refreshment Break**

Sponsored By: KRUSE, LANDA & MAYCOCK  
REGENCE BLUE CROSS/BLUE SHIELD OF UTAH

9:30 a.m. - 12:30 p.m. **Kids' Fiesta Fun Activity -**  
*Meet at Fiesta Fun - Family Fun Center, 171 E. 1160 S.*

9:50 a.m. **Breakout Sessions: (1 each)**

### **1 Hot Topics/Hard Issues**

Sharon A. Donovan, Dart, Adamson, Donovan & Hanson  
Larry E. Jones, Hillyard, Anderson & Olsen  
Marcella L. Keck, Accord Mediation  
*A discussion of 401Ks, the child abuse database, child support vs. liberal visitation and the dependency exemption/child credit.*

**2 Perfecting and Presenting Claims Against the United States Under the Federal Tort Claims Act; or How to Reach the Ultimate Deep Pocket**  
Capt. Dave Frakt, Hill Air Force Base  
*How, where and when do I file an administrative claim and what do I need to include? How, where and when can I file suit? What law applies? What damages are available? Also, review the common defense and exceptions to the FTCA including: the discretionary function, the intentional torts exception, the Feres doctrine, and the independent contractor defense.*

**3a Sweeping Changes to the Discovery Rules - Mandatory Disclosures, Expert's Reports and 240 Days to Conduct Fact Discovery, Just to Name a Few**  
Francis J. Carney, Anderson & Karenberg  
Alan L. Sullivan, Snell & Wilmer  
*An opportunity for discussion and comment on proposed amendments to the discovery provisions of the Utah Rules of Civil Procedure.*

10:40 - 10:50 a.m. **Refreshment Break**

Sponsored By: HUNTSMAN & CHRISTENSEN  
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FARR, KAUFMAN, SULLIVAN, GORMAN, JENSEN,  
MEDSKER, NICHOLS & PERKINS

10:50 a.m. **Breakout Sessions: (1 each)**

**3b Sweeping Changes to the Discovery Rules, cont.**

### **4 ETHICS: Guidelines for Utilization of Legal Assistants**

Billy L. Walker, Office of Professional Conduct, Utah State Bar  
*A discussion of the appropriate use of legal assistants under the guidelines adopted by the Office of Professional Conduct.*

### **5 ADR: Love It or Leave It?**

Sharon A. Donovan, Dart, Adamson, Donovan & Hanson  
Diane Hamilton, Utah Court of Appeals  
James R. Holbrook, Callister Nebeker & McCullough  
Kent B. Scott, Walstad & Babcock  
*How has alternative dispute resolution impacted litigation practice? Are lawsuits conducted differently? What are the positive and negative effects of mediation and arbitration on litigation practice? What is the current status of arbitration clauses?*

- 6 Legal Research on the Internet: Beyond the Basics**  
 Suzanne Miner, University of Utah Law Library  
 Marsha Thomas, University of Utah Law Library  
*Go beyond the basics. In addition to reviewing the best internet sites for legal research, the presenters will show you some fee-based research services on the internet like VersusLaw, Shepards & KeyCite, Code-Co, Full Authority, Westlaw and Lexis. Also learn how to avoid the common pitfalls you may encounter while researching on the internet.*

11:40 - 11:50 a.m. **Refreshment Break**

Sponsored By: HUNTER & BROWN  
 OLSON & HOGGAN  
 WOMEN LAWYERS OF UTAH

- 11:50 a.m. **Breakout Sessions:** (1 each)
- 7 The New Utah Tax Court: Issues and Proceedings for De Novo Appeal From Tax Commission Decisions**  
 Mark K. Buchi, Holme Roberts & Owen  
 Clark L. Snelson, Utah Attorney General's Office  
*This session will include a discussion of the constitutional amendment that created the new Utah Tax Court and the procedure of the new court.*
- 8 The Legal Issues of Y2K**  
 Bradley D. Patterson, Ballard, Spahr, Andrews & Ingersoll  
*This session will cover the legal issues surrounding the year 2000 problem. Lawyers need to be aware of the potential for harm to their clients and how to provide some protection for them. This session will provide an overview of how lawyers can help their clients prepare for this event.*
- 9 A Current Affair. He's Willing. She's Willing? When Does the Balance of Power Make it Harassment? Scenarios From Real Life.**  
*A star-studded cast of real life action heroes will play out scenarios of harassment and discrimination.*

12:00 noon **Golf Clinic - Sunbrook Golf Course**

12:40 p.m. **Meetings Adjourn for the Day**

- 1:00 p.m. - 1:45 p.m. **"Is It True What They Say About Dixie?"**  
*An optional lecture given by "Ranger Bart" Anderson regarding the unique wildlife, geology and endangered species of the St. George area.*

- 1:30 p.m. **Golf Tournament - Sunbrook Golf Course**
- 2:00 p.m. **Tennis Tournament - Green Valley Tennis Courts**
- 7:00 p.m. **Reception - Dixie Center North Lobby**  
 Sponsored By: LEXIS-NEXIS
- 7:30 p.m. **Dinner & Featured Speaker**  
**"Selling Your Soul to the Devil, Get a Lawyer"**  
 Robert Kirby, Salt Lake Tribune

Sponsored By: RAY, QUINNEY & NEBEKER

## **SATURDAY, MARCH 6, 1999**

- 8:00 a.m. **Registration & Continental Breakfast**  
 Dixie Center North Lobby

Sponsored By: DURHAM, EVANS, JONES & PINEGAR  
 WILLIAMS & HUNT

- 8:30 a.m. **General ETHICS Session:** (1.5)  
**Avoiding Offensive Personality**  
 George A. Hunt, Williams & Hunt  
 Carman E. Kipp, Kipp & Christian  
 Ellen M. Maycock, Kruse, Landa & Maycock  
 Stephen B. Nebeker, Ray, Quinney & Nebeker  
 Billy L. Walker, Office of Professional Conduct, Utah State Bar  
*Focusing on civility in the profession, this session will also include discussion on the advantages of civility to clients and the administration of justice.*
- 9:45 a.m. **General Session: General Comments on Current SEC Developments** (1)  
 Norman S. Johnson, Commissioner, U.S. Securities and Exchange Commission  
*Commissioner Johnson will discuss his experiences as a Utah attorney serving on the Commission, and comment on some current SEC developments.*

Sponsored By: SECURITIES SECTION, UTAH STATE BAR

- 10:00 a.m. **"Is It True What They Say About Dixie" Nature Hike**  
*Meet "Ranger Bart" Anderson at the Outdoor Outlet, 1062 E. Tabernacle, and then head off for a nature hike through some of St. George's beautiful scenery.*



# PROGRAM CONT.

10:35 - 10:45 a.m. Refreshment Break

Sponsored By: PARR WADDOWS BROWN GEE & LOVELESS  
NIELSEN & SENIOR

10:45 a.m. Breakout Sessions: (1 each)

**10 Recent Developments Under the Americans With Disabilities Act**

Kenneth B. Grimes, Jr., Perkins, Schwobe & McLachlan

*Definitions of "disability" including psychological and genetic disorders; interview questions and hiring criteria; relationship between ADA remedies and public and private insurance benefits.*

**11 A Practical Guide to Petitioning for Permission to Make an Interlocutory Appeal**

Karen Hobbs, Utah Court of Appeals

Karen S. Thompson, Utah Court of Appeals

Hon. Michael J. Wilkins, Utah Court of Appeals

*A nuts-and-bolts discussion on how to determine whether to make such a petition, how to proceed, and what the appellate courts look for in deciding whether to grant permission.*

**12 Bar Services on the Internet**

Toby Brown, Utah State Bar

Lincoln Mead, Utah State Bar

*A walk-through of the Bar's new web page, highlighting the various tools available to you. Learn about on-line licensing, on-line registration for events, the new e-mail service for Bar members, the on-line events calendar, the membership directory and many other useful tools.*

**13 ETHICS: Ethical Considerations in Communicating With State Agencies**

Carol Clawson, Snell & Wilmer

Patrick J. O'Hara, Utah Attorney General's Office

Gary G. Sackett, Questar Corporation

*A discussion of ethical issues which arise in litigation, formal and informal administrative proceedings, and non-litigation settings. Discussion will include concerns with ex-parte contact, and in administrative proceedings, issues involving contact with the tribunal.*

11:35 - 11:45 a.m. Refreshment Break

Sponsored By: RICHARDS BRANDT MILLER & NELSON  
STRONG & HANNI

( ) Indicates Number of CLE Hours Available

11:45 a.m. Breakout Sessions:

(1 each)

**14 Pass the Bacon—An Introduction to the Davis-Bacon Act**

M. Eric Olmstead, Jones, Waldo, Holbrook & McDonough

John J. Walton, Jones, Waldo, Holbrook & McDonough

*A primer on coverage, compliance and enforcement issues under the Davis-Bacon Act.*

**15 Child Abuse Database**

Kristin Brewer, Guardian ad Litem

Stephen C. Clark, ACLU

*Carol L. C. Verdoia, Utah Attorney General's Office Persons substantiated for physical or sexual abuse by the Division of Child and Family Services are placed on a confidential database, given notice, and given an administrative hearing. Debate will focus on protection of children and due process rights of those substantiated.*

**16 Answers to Patent Law Questions for the General Practitioner**

M. Reid Russell, Attorney at Law

*A general discussion of how to direct a client with an Intellectual Property question to provide the best representation.*

**The Role of Intellectual Property Assets and Business Success**

A. John "Jack" Pate, Madson & Metcalf

*Using Intellectual Property is a business decision not a legal conclusion. The Intellectual Property tools, their securement, protections, strengths and costs simply form one of three parts of a strategy to protect your client's profit margins. This discussion focuses on Intellectual Property priorities and questions to get your client from where it is to where it wants to be.*

12:35 - 12:45 p.m. Break

Sponsored By: BERMAN, GAUFIN, TOMSIC & SAVAGE  
WINDER & HASLAM

12:45 - 3:00 p.m. **Salt Lake County Bar Film Presentation and Discussion: The Verdict** (2)

Sponsored By: SALT LAKE COUNTY BAR ASSOCIATION

3:00 p.m. Meetings Adjourn

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**\*PLEASE PRINT**

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Attention: Arnold Birrell, Fax Number (801) 531-0660.

# Filing an Employment Discrimination Claim

by Todd Weiler

Before filing a claim for employment discrimination, every practitioner should carefully evaluate the claim to determine whether it is actionable. Although the Utah Antidiscrimination Act<sup>1</sup> prohibits discrimination in employment based on race, color, sex, religion, national origin, age, or handicap, an employer has discretion to choose among candidates so long as the decision is not based on unlawful criteria. See Utah Code Ann. §34A-5-101 to -108 (1997); *University of Utah v. Industrial Comm'n*, 736 P.2d 630 (1987). For sexual harassment to be actionable, it must be sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. *Hirase-Doi v. U.S. West Communications*, 61 F.3d 777 (10th Cir. 1995).

Section 34A-5-106 provides a detailed list as to what constitutes and what does not constitute a discriminatory or unfair employment practice. Utah Code Ann. §34A-5-106. A complaining party may be held liable for an employer's costs and attorney's fees associated with responding to a claim without merit. Utah Code Ann. §34A-5-107(8)(b). An actionable claim may be filed with the state administrative agency, the Utah Labor Commission, or directly with the federal agency, the Equal Employment Opportunity Commission ("EEOC").

### FILING A CLAIM WITH THE UTAH LABOR COMMISSION.

Under state law, the Labor Commission has jurisdiction over unlawful employment practices and discrimination in Utah. It has the power to receive, reject, investigate, and hold hearings on complaints alleging discriminatory employment practices. Utah Code Ann. §34A-5-104. Any aggrieved person may request agency action by filing a verified general intake form with the Labor Commission. Such a request must be filed within 180 days after the occurrence of the discriminatory act or practice. See also *Retherford v. AT&T*, 844 P.2d 949 (Utah 1992).

The Labor Commission in Utah is under contract with the EEOC to conduct investigations of claims of unlawful employment discrimination within the state. As such, a filing of a request for

agency action in Utah is automatically jointly filed with the EEOC's regional office in Phoenix, Arizona. If the Labor Commission receives a request for action after the 180-day time period has run but before the expiration of 300 days, then the request is filed directly with the EEOC. A claim filed after 300 days is not actionable.

Sections 34A-5-107 and 63-46b-3(3) of the Utah Code outline the procedure for an aggrieved person to file a claim with the Utah Labor Commission. Generally, the request for agency action must be in writing and include information similar to that usually found in a complaint filed with the district court. See Utah Code Ann. §63-46b-3(3)(a) (1997). The request should be filed with the Labor Commission, and copies should be mailed to everyone with a direct interest in the requested action.

After a request for agency action is filed, the Labor Commission will assign an investigator to attempt to effect a settlement between the parties by conference, conciliation, or persuasion. If a quick settlement is not reached, the investigator is required to make a prompt and impartial investigation of all relevant allegations in the request for agency action. The Act provides that the investigations are to be conducted in fairness, and that no settlement should be attempted if it is clear that no discrimi-

*Todd Weiler is a litigation associate with Scalley & Reading, P.C. He graduated cum laude from the J. Reuben Clark Law School in 1996. During law school, he was an Articles Editor on the BYU Law Review. He and his wife, Elizabeth, have two children.*



*Prior to law school, he worked in sales and marketing with an international travel company. Todd chose to forego frequent business trips to boring places like Hawaii and Europe so he could become an attorney and write an occasional article for the Utah Bar Journal.*

natory practice has occurred. Utah Code Ann. §34A-5-107(3)(c).

Once the investigation is completed, the investigator reports his/her findings to the director of the Labor Commission, who may issue a determination and order for dismissal of the adjudicative proceeding. If the investigator found sufficient evidence to support the allegations in the request for agency action, the Labor Commission must set forth the factual and legal basis of its decision and may order the respondent to cease any discriminatory practice and to provide relief to the aggrieved party. Either party has 30 days to make a written request for an evidentiary hearing and de novo review of the agency's decisions. If no written request for a review is received within 30 days, the determination and order become the Labor Commission's final order.

The Labor Commission conducts its initial investigation of an employment discrimination claim as an informal adjudicative proceeding. *See* Utah Code Ann. §63-46b-4. Once a "cause" or "no cause" determination is made, then the claimant may request a right-to-sue letter and then file a private action in district court.<sup>2</sup> The claimant, not the respondent employer, controls whether the claim remains under the jurisdiction of the administrative agency or the district court. If an appeal is made to the division of adjudication, then the Labor Commission follows the procedures for a formal adjudicative proceeding. *See* Utah Code Ann. §63-46b-6.

If a hearing is timely requested by either party, the Labor Commission will hold an evidentiary hearing to review de novo the evidence supporting or refuting the allegations contained in the request for agency action. The presiding officer at the hearing has the authority to order the respondent to cease any discriminatory practice, and to provide relief to the complainant including reinstatement, back pay and benefits, and attorney's fees and costs.

After the Labor Commission holds an evidentiary hearing and the presiding officer issues an order either dismissing the action or providing relief, either party has 30 days to file a written request for review of the order issued by the presiding officer at the hearing. Utah Code Ann. §34A-5-107(11)(a). The procedure for such a review is governed by Section 63-46b-12, and may involve written briefs and oral arguments. Utah Code Ann. §63-46b-12 (1997). The agency will issue an order on review

containing findings of fact, conclusions of law, and a statement whether the presiding officer's decision is affirmed, reversed, modified, or remanded. Utah Code Ann. §63-46b-12(6)(c).

An order on review is subject to judicial review by the Utah Supreme Court or Court of Appeals as provided in Section 63-46b-16. The appellate court will grant relief on the basis of the agency's record if it determines the person seeking review has been substantially prejudiced by any of eleven enumerated grounds. Utah Code Ann. §63-46b-16(4).

The above-described procedure is the exclusive remedy under Utah state law for employment discrimination based on race, color, sex, retaliation, pregnancy, child birth or pregnancy-related conditions, religion, national origin, age, or handicap. The commencement of an action with the EEOC bars the commencement or continuation of any adjudication before the Labor Commission in connection with the same claim. Utah Code Ann. §34A-5-107(15) & (16).

*"The [Equal Employment Opportunity Commission] is empowered to prevent any person from engaging in any unlawful employment practice."*

#### **FILING A CLAIM DIRECTLY WITH THE EEOC.**

Although charges filed at the state level are automatically jointly filed with the EEOC, a party may elect to bypass the state agency and file directly with the

EEOC. The EEOC is empowered to prevent any person from engaging in any unlawful employment practice. *See* 42 U.S.C.S. §2000e-5 (1989). The EEOC's field office in Phoenix, Arizona handles all of the claims filed in Utah.

A charge must be filed with the EEOC within 180 days of the occurrence of the unlawful employment practice. 42 U.S.C.S. §2000e-5(e); EEOC Procedural Regulations, 29 C.F.R. §1601.13 (1998). If the claim was first filed with a state agency, the aggrieved party has up to 300 days to file with the EEOC, depending on the circumstances. A charge must be verified in writing and should contain a clear and concise statement of facts constituting the unlawful employment practice. 29 C.F.R. §§1601.9 & 1601.12. Although an unverified charge may be timely filed with the EEOC, the commission will not investigate the charge until it is verified. *Peterson v. Wichita*, 888 F.2d 1307 (10th Cir. 1989).

Any person or organization may file a charge on behalf of a person claiming to be aggrieved – and the charge need not identify the name of the individual that the charge is made.<sup>3</sup> Compliance with Title VII filing requirements is a conditional precedent to a suit<sup>4</sup> and is subject to waiver, estoppel, and equi-

table tolling. See *Million v. Frank*, 47 F.3d 385 (10th Cir. 1995).

Once a claim is filed, the EEOC must serve notice on the target employer within 10 days, and conduct an investigation of the charges in the complaint. Charges filed with the EEOC are not made public. 29 C.F.R. §1601.22. Fines and imprisonment may be imposed on any person making information public in violation of Section 2000e-5(a).

During the investigation, the EEOC affords substantial weight to findings and orders made at the state level. Federal law mandates that the EEOC make its determination, when practicable, within 120 days of the filing of the charge. If the EEOC determines after the investigation that there is not reasonable cause to substantiate the charge, the charge will be dismissed. If the EEOC finds reasonable cause to support the claim, it endeavors to eliminate the unlawful practice through a mutual settlement.

If the EEOC has been unable to secure a conciliation agreement from the respondent within 30 days, the commission may initiate a suit against the employer. Upon a finding that a respondent has intentionally engaged in an unlawful employment practice, the court may issue an injunction, order affirmative action, order the reinstatement of employees with back pay, or any other appropriate equitable relief. 42 U.S.C.S. §2000e-5(g).

If the EEOC investigation reveals there is not reasonable cause to believe that an unlawful employment practice has occurred, the commission issues a letter of determination to all parties indicating the finding. The letter of determination informs the claimant of the right to sue in federal court within 90 days of the receipt of the determination letter. 29 C.F.R. §1601.19.

If the investigation determines that reasonable cause exists to believe that unlawful employment discrimination has occurred or is occurring, and no settlement has been effected, the EEOC issues a determination finding reasonable cause. 29 C.F.R. §1601.21. Once a reasonable cause determination is made, the EEOC has the right to file litigation against the respondent. Since the EEOC receives thousands of complaints every year and has limited resources, the commission frequently elects to issue a 90-day notice of right to sue in federal court instead of filing litigation. 29 C.F.R. §1601.28(b).

The claimant may request, in writing, that a right-to-sue letter be issued at any time after filing its charge with the EEOC. 29 C.F.R. §1601.28(a)(3). The right-to-sue letter authorizes the claimant to file civil action under Title VII. Federal courts lack jurisdiction to entertain Title VII claims unless such claims are previously filed with the EEOC. *Seymore v. Shawver & Sons,*

*Inc.*, 111 F.3d 794 (10th Cir.), *cert. denied*, 118 S. Ct. 342 (1997). Issuance of a right-to-sue letter usually terminates EEOC proceedings, but does not preclude the EEOC from offering assistance to the claimant. 29 C.F.R. §1601.28(a)(4).

The court has considerable discretion to formulate remedies for Title VII violations, including the discretion to award attorney's fees, including expert fees, as part of costs in the action. 42 U.S.C.S. §2000e-5(k). See *Carter v. Sedgwick County*, 36 F.3d 952 (10th Cir. 1994) (stating a central purpose of Title VII is to make persons whole for injuries suffered on account of unlawful employment discrimination).

The Tenth Circuit has held that, absent active deception, state law savings statutes and other tolling provisions do not apply in Title VII suits. See *Mascheroni v. Board of Regents*, 28 F.3d 1554 (10th Cir. 1994) (stating Title VII time limits will be tolled only if there has been active deception of claimant regarding procedural prerequisites); *Brown v. Hartsborne Public School Dist.*, 926 F.2d 959 (10th Cir. 1991) (stating that state rule that plaintiff had one year to refile dismissed suit did not apply to toll Title VII limitations period).

The statute of limitations for filing a Title VII complaint is tolled, however, pending an in forma pauperis petition. *Jarrett v. U.S. Sprint Communications*, 22 F.3d 256 (10th Cir. 1994). A plaintiff alleging a continuing pattern of unlawful employment discrimination raises an issue as to whether the court should consider incidents that occurred prior to the 300-day time limitation. *Martin v. Nannie & Newborns*, 3 F.3d 1410 (10th Cir. 1993); *Purrington v. University of Utah*, 996 P.2d 1025 (10th Cir. 1993).

## CONCLUSION

State and federal administrative procedures must be followed before filing a private claim against an employer for discrimination in the workplace. Employment law practitioners should carefully evaluate potential claims for unlawful employment discrimination, and attempt to meticulously follow the procedures for filing and prosecuting such claims.

<sup>1</sup>The 1996 amendment, effective July 1, 1997, renumbered the sections in the Act.

<sup>2</sup>A claimant can request a right-to-sue letter at virtually any time after the initial investigation to pursue the claim in the district court.

<sup>3</sup>The person making the charge must, however, provide the EEOC with the name, address, and telephone number of the aggrieved party so the EEOC can verify the authorization of the charge. If requested, the EEOC will keep the identity of the aggrieved party confidential. 29 C.F.R. §1601.7.

<sup>4</sup>Title VII claims are subject to compulsory arbitration. *Metz v. Merrill Lynch et al.*, 39 F.3d 1482 (10th Cir. 1994).



# Young Lawyer Profile – Julianne Renee Blanch

by Brian P. Miller

During the summer of 1997, Juli asked colleague Bob “Mad Dog” Henderson if she could help pace him during the upcoming Wasatch 100 Mile Run, which he was running for the ninth time. Although Juli asked a number of times, Bob felt she would not be able to handle it and essentially ignored her. Eventually, Bob relented to Juli’s request and told her that he would try her out on a “test run.” The test run was an 8-mile mountain run in Lambs and Millcreek Canyon consisting of approximately 2 miles nearly straight up, 2 miles down the other side, then back again. During the last 2-mile leg, Bob decided to really push and was going quite fast. Juli was just behind him. At that point, Bob heard Juli take an obviously nasty spill. By the time Bob could stop and turn around to see how Juli was, she had already picked herself up and was starting to run again. Although Juli had taken a nasty fall and was “quite bloody,” she passed the test in Bob’s mind because “even though she had fallen, she didn’t baby herself just because she was bloody.” Juli went on to run 22 miles with Bob during the 1997 Wasatch 100, then 24 miles last year during the 1998 Wasatch 100. She has run the Desolation Trail Marathon the past two years and participates in road races throughout the year.

Juli was raised in Munster, Indiana. While in high school, she excelled in extracurricular activities, including softball, cross-country, and speech and debate (obtaining state championship honors in extemporaneous speaking). Juli also participated in an honors foreign language program and spent a summer in Mexico as part of that program. While there, Juli lived with a local family and attended language and culture classes. Juli’s love for other languages and cultures continued into her college years at Indiana University, where she double majored in political science and East Asian languages and cultures and minored in Spanish and English. During her senior year at Indiana University, Juli spent a semester in Nagoya, Japan, where she lived with a Japanese family, taught English classes and took Japanese history and literature classes at Nanzan University.

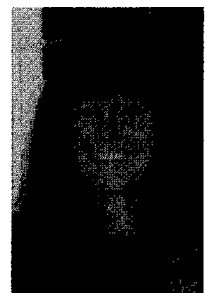
Near the completion of her undergraduate degrees at Indiana University, Juli began to apply to law schools. At first, she was not going to apply to Harvard because she didn’t think she would be accepted. Her mother, however, called her while she

was in Japan and told her that Harvard had sent her an application and had requested that she apply. In addition, Harvard had a well-recognized East Asian law program which interested Juli—so she decided to apply. Juli was accepted and attended Harvard Law School.

Juli enjoyed law school and the stimulating environment she found at Harvard. She was elected president of the Harvard Law School Republicans. In the West, such a position might not involve much controversy; however, at Harvard, the vast majority of the students were very liberal. Although Juli doesn’t consider herself a staunch Republican by Utah standards and is probably more of a libertarian, she is proud of the service as a past president of the Harvard Law School Republicans because she helped educate others about “minority” philosophies and positions. Juli is quick to praise the public figure she most admires, Ronald Reagan, but she also respects liberal figures such as JFK, whom Juli feels shared Reagan’s ability to make Americans proud of common achievements and their country.

While Juli greatly enjoyed her experience at Harvard Law School, perhaps the most important by-product of her law school experience is her husband, James Blanch. James admits that after seeing Juli for the first time in their Constitutional Law class the second year of school, he engaged in a calculated effort to learn about her and to arrange an inconspicuous way for them to meet. Eventually, James and Juli were introduced by a mutual friend and hit it off immediately. They decided to marry not long after they met. Juli says her family is complete for the time being with the addition of her favorite present from James — their five-year old pug Winston, whom Juli named after another individual she admires, Winston Churchill.

As James was from Utah and planned to return to Salt Lake City as an associate at Parsons Behle & Latimer, Juli was required to make marriage and employment decisions quite quickly after meeting James in order to secure a job in Salt Lake City. Juli agreed to come to Utah to live without having ever seen it — a decision based largely on James’ description of the beauty of the state. James’ description was absolutely on the mark, according to Juli.



She loves Utah for its beautiful natural surroundings and has come to appreciate it more since she began running in the mountains. Juli accepted an associate offer from Snow, Christensen & Martineau because she was impressed with the very friendly atmosphere and the firm's emphasis on litigation.

As an associate attorney, Juli has continued to work hard and dedicate herself to the practice of law and her clients. Juli is also a valuable asset to the firm, participating as a member of the firm's recruiting committee and heading up the firm's Sub-for-Santa program. She was a board member of the Battered Womens' Advocacy Project in law school. Juli continues to participate in volunteer activities, acting as a volunteer attorney assisting domestic violence victims, and she has recently signed up to volunteer at the Ronald McDonald House. Juli was also selected to participate as a member of the Supreme Court Advi-

sory Committee on the Rules of Appellate Procedure.

Juli attributes her success and her work ethic and principles to her parents and teachers. Juli's parents always encouraged her in all of her activities and let her know they were always proud of her regardless of the result. Consequently, Juli has never been afraid to try something and has never backed down from a challenge. Juli's parents have worked very hard during their lives and, by example, have supplied Juli with a very strong work ethic. Juli's high school teachers and coaches were also very supportive of her and taught her to strive to do her best in everything she does. As a result, Juli is a strong believer in hard work, dedication and always doing her best at any task, no matter how small or seemingly insignificant. Bob Henderson, for one, would agree.

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# *The Creation and Proposed Future of the Legal Assistant Division of the Utah State Bar*

by Kay D. Hanson, GLAS  
Chair, Legal Assistant Division

**I**n March of 1996 the Utah Supreme Court approved a petition to establish the Legal Assistant Division of the Utah State Bar ("LAD"). How did this happen? It wasn't easy! Where is it going? It's up to you!

The Legal Assistants Association of Utah ("LAAU"), established by a small group of legal assistants (also referred to as paralegals) in 1979, began discussions with the Bar Commissioners at the Utah State Bar ("the Bar") in the 1990's, regarding the possibility of affiliate status for legal assistants. Members of LAAU and the Bar worked together to draft recommendations for membership qualifications and ethical standards which were formally presented to the Bar in July of 1994. In October of 1994, the Bar approved the creation of a legal assistant division and a Petition for the Creation of a Legal Assistant Division of the Utah State Bar was presented to the Utah Supreme Court.

The Petition expressed the Bar's growing concerns regarding the lack of availability of affordable legal services in an increasingly large segment of the public. The Bar's concerns were consistent with the conclusions of the *ABA's Report on Non Lawyer Activity in Law-Related Situations (August, 1995)*. That report anticipated that this segment of the public would turn to other means and the problem would ultimately result in an increase in the number of individuals engaging in the unauthorized practice of law. The Bar believed that the creation of a legal assistant division of the Bar was one method by which the public could be assured that legal services would be performed at the lowest price while also assuring quality of work because legal assistants would be supervised by lawyers responsible for the ultimate work product.

The Petition set forth a definition of a "legal assistant" and the structure of the division. The Bar proposed that legal assistant members of the division undergo an application process that would require the following:

- 1) an initial and annual certification of continuous sponsorship of a legal assistant by an employer who is a member of the Bar;
- 2) a certification by the attorney and legal assistant that the legal assistant would undertake no legal work outside the attorney's supervision;
- 3) an assumption of responsibility by the attorney for the compliance of the legal assistant with all applicable rules of the Bar;
- 4) the legal assistant's parallel commitment that the attorney and legal assistant would notify the Bar of any change of employment. The legal assistant's authority to function as a member of the division would terminate concurrent with employment by the sponsor unless sponsorship is accepted by another employer-member of the Bar; and
- 5) an appropriate fee.

Finally, under this proposal, any legal assistant, whether a member of the division or not, would not be directly subject to

*Kay D. Hanson is the current Chair of the Legal Assistant Division of the Utah State Bar. She became a Certified Legal Assistant (CLA) in 1992 and a Civil Litigation Specialist in 1994. She has worked as a legal assistant for 17 years and is currently owner/operator of Counsel II Counsel, a legal assistant/paralegal services company. She was president of the Legal Assistants Association of Utah (LAAU) in 1992-1993 and served on the Board of Directors of the National Association of Legal Assistants (NALA) as Region VII Director from 1993 through 1996.*



discipline by the Bar since legal assistant status is dependent upon affiliation with an attorney who is subject to discipline for failure to adequately supervise legal assistants.

The petition was approved by the Utah Supreme Court in March of 1996 and in July of 1996 the LAD was established.

In June of 1997, the Access to Justice Task Force, created by the Bar to study ways of making it easier for individuals to get legal help, issued a preliminary report which recommended exploring, and if appropriate, adopting licensure of legal assistants, enabling them to provide limited legal services and advice to improve access to justice. This preliminary report was approved by the Bar in September of 1997. The Bar also approved the formation of a LAD subcommittee ("Licensing Committee") to explore and draft a licensure proposal.

In October of 1997 the LAD organized the Licensing Committee to prepare a licensing model and examine related issues. *[The LAD did not then, and does not presently, support licensure of legal assistants.]* However, because

this issue has been studied, researched and discussed for years, the LAD believed that it should be directly involved with whatever proposal was submitted to the Bar. Legal assistants from various practice fields along with a representative from the Bar held regular meetings to discuss the licensing model and submitted its proposed licensing model to the Bar on April 6, 1998. The following is a portion of the proposed licensing model.

The Licensing Committee determined that licensing is not a solution to the Unauthorized Practice of Law ("UPL"). If anything, the issue of UPL may be greater if licensing occurs without thorough review and education/training of all effected persons. However, under the Licensing Committee's proposal, licensed legal assistants remain under the supervision of a licensed attorney while their duties expand from "direct" supervision to "general" supervision. The Licensing Committee recommended as follows:

1. **Mandatory Licensing.** All persons who take the title of "legal assistant", "paralegal", "lawyer's assistant", etc., who are performing the basic duties of a legal assistant should be licensed. As lawyers, administrative agencies, courts and corporations expand direct services to be performed by legal assistants a mandatory licensing

*"As lawyers, administrative agencies, courts and corporations expand direct services to be performed by legal assistants a mandatory licensing requirement will serve to protect the public."*

requirement will serve to protect the public.

*This issue was discussed at length during the Licensing Committee meetings and it was decided that if legal assistants are licensed, it should include everyone in order to protect the public and avoid confusion.*

2. **General Supervision.** A general supervision standard should be applied to the attorney/legal assistant relationship as opposed to the existing direct supervision standard.
3. **Written Examination.** This committee determined that a written examination is the only fair and adequate test of competency and that the voluntary certification examination offered by the National Association of Legal Assistants ("NALA") is the most reliable standard. This would set a basic standard for the licensing of legal assistants.

Although there was some discussion regarding the Bar writing its own examination, it was this committee's opin-

ion that it would be too time and cost restrictive. By using NALA's existing examination, the licensing transition would be smoother; there would be no need to re-create a reliable process already in place.

4. **Grandfathering.** It was suggested that there be a two to three year period of time allowed for legal assistants to meet the qualifications necessary to take and pass the NALA exam. During that time the legal assistant would be allowed to continue working as a legal assistant. The legal assistants in Utah who have already taken the NALA test would be immediately qualified for licensure.

The licensing proposal can be read in its entirety on the Bar's web site at "[www.utahbar.org](http://www.utahbar.org)."

The LAD was informed that the Bar approved the licensing model with the exception of the definition of "general supervision" vs. "direct supervision".

In the meantime, the LAD went about the everyday tasks of running the division. Committees were formed such as the Education Committee, which organizes and presents CLE seminars; the Membership Committee; the Marketing Committee; the Ethics Committee, etc. Further information about the LAD committees can be found on the web site.

In an effort to focus the LAD's energies effectively, a Long Range

Planning Committee was created to set goals for the future of the division. The Long Range Plan was submitted to the Bar for approval in May of 1998. In order to create a level of professionalism and competency for those calling themselves legal assistants, the Long Range Plan recommended the adoption of standards for membership and ethical behavior as well as guidelines for the utilization of legal assistants. The full text of the Long Range Plan is also on the web site.

The Executive Committee of the LAD met with David Nuffer, the LAD's liaison with the Bar, in October of 1998 to discuss issues such as implementation of the LAD's Long Range Plan and what steps should be taken with regard to the licensing proposal. Areas of concern with regard to licensing which the LAD wanted to research further, include, among other things: general supervision vs. direct supervision; mandatory licensing vs. voluntary licensing; expanded duties and/or specialty areas and monitoring the progress and debate over licensure in other states. Mr. Nuffer agreed with the LAD's suggestions. Because of the time that will be involved in the above research, Mr. Nuffer recommended to the Bar that the LAD's Long Range Plan be implemented immediately.

At the Bar's December meeting, the LAD's Long Range Plan was approved. The changes will be made to the structure of the division in July, 1999 when individual memberships are renewed. These changes include new membership requirements and standards of ethical behavior.

#### **MEMBERSHIP AND STRUCTURE OF THE LEGAL ASSISTANT DIVISION.**

Qualified individuals may become "Legal Assistant Affiliates" of the Utah State Bar upon meeting the following standards of professional competency and qualifications:

1. Successful completion of an ABA approved program of education and training for legal assistants, and current employment as a legal assistant under the direct supervision of a duly licensed Utah attorney; OR
2. Successful completion of an institutionally accredited legal assistants' program that consists of a minimum of sixty (60) semester hours (or equivalent quarter hours) of which fifteen (15) are substantive legal courses, and current employment as a legal assistant under the direct supervision

of a duly licensed Utah attorney; OR

3. Successful completion of an institutionally accredited legal assistants' program that consists of sixteen (16) semester hours of substantive legal courses, plus forty-five (45) semester hours (or equivalent quarter hours) of general college curriculum, and at least one (1) full year of employment experience as a legal assistant under the direct supervision of a duly licensed Utah attorney (All applicants meeting qualifications 1, 2 or 3 must submit a certified copy of the school's transcript or curriculum showing all courses covered. No home study, video or correspondence courses will be accepted.); OR
4. A minimum of five (5) continuous years of full time employment experience as a legal assistant under the direct supervision of a duly licensed attorney, which experience complies with the definition of a legal assistant as defined below, and current employment as a legal assistant and

*"In order to create a level of professionalism and competency for those calling themselves legal assistants, the Long Range Plan recommended the adoption of standards for membership and ethical behavior as well as guidelines for the utilization of legal assistants."*

completion of sixteen (16) CLE hours in the last two (2) years. CLE must be approved by the National Association of Legal Assistants (NALA) (All applicants meeting this qualification must submit affidavits of the applicant's supervising attorney(s), certifying the minimum of five (5) continuous years of full time legal assistant experience and proof of CLE attendance.); OR

5. A baccalaureate or higher degree in any field and at least two (2) continuous years of full-time employment experience as a legal assistant under the direct supervision of a duly licensed Utah attorney, and current employment as a legal assistant (All applicants meeting this qualification must submit proof of completion of a baccalaureate or higher degree and submit affidavits of the applicant's supervising attorney(s), in the form set forth below, certifying the minimum of two (2) continuous years of full time legal assistant experience.); OR
6. Successful completion of the voluntary certification examination given by NALA, or a comparable examination recognized in the industry for at least seven (7) continuous years, AND completion of at least six (6) months of full-time employment experience as a legal assistant under the direct supervision of a duly licensed Utah attorney, and current employment as a legal assistant (All applicants meeting this qualification must submit proof of certification.).



All applicants for membership in the LAD must also certify the following:

- A. That they have not been convicted of a felony for which they have not been pardoned or otherwise had their full rights restored;
- B. That they have never been convicted of a misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property; and
- C. That they have never been expelled or suspended from membership in a law related professional association without being fully reinstated.

In order to maintain membership in the LAD, a "Legal Assistant Affiliate" of the Utah State Bar must complete 10 hours of continuing legal education ("CLE") annually, of which one hour shall be ethics. The Legal Assistant Division shall provide opportunities for CLE. The CLE shall be approved by NAIA. The reporting of CLE by legal assistant affiliates shall be administered by the LAD.

Legal Assistant Affiliates shall not be directly subject to discipline by the Utah State Bar. However, supervising or responsible attorneys are responsible for all work undertaken by Legal Assistant Affiliates for or on their behalf and for violation of The Guidelines for the Utilization of Legal Assistants.

The following canons of ethics were approved by the Bar for the LAD, as a general guide intended to aid legal assistants and attorneys:

**Canon 1** - A legal assistant shall not perform any of the duties that attorneys only may perform nor take any actions that attorneys may not take.

**Canon 2** - A legal assistant shall not:

- a) establish an attorney-client relationship;
- b) establish the amount of a fee to be charged for legal services;
- c) give legal opinions or advice;
- d) represent a client before a court or agency unless so authorized by that court or agency;
- e) engage in, encourage, or contribute to any act which would constitute the unauthorized practice of law; and

- f) engage in any conduct or take any action, which would assist or involve the attorney in a violation of professional ethics or give the appearance of professional impropriety.

**Canon 3** - A legal assistant may perform any task which is properly delegated and supervised by an attorney provided the attorney maintains responsibility for the work product, maintains a direct relationship with the client, and maintains responsibility to the client.

**Canon 4** - A legal assistant shall take reasonable measures to ensure that his or her status as a legal assistant is established at the outset of any professional relationship with a client, court or administrative agency, a member of the general public or other lawyers.

**Canon 5** - A legal assistant shall ensure that all client confidences are preserved.

**Canon 6** - A legal assistant shall take reasonable measures to prevent conflict of interest resulting from his or her employment affiliates, or outside interests.

**Canon 7** - A legal assistant must strive to maintain integrity and a high degree of competency through education and training with respect to professional responsibility, local rules and practice, and through continuing education in substantive areas of law to better assist the legal profession in fulfilling its duty

to provide legal services.

**Canon 8** - A legal assistant shall abide by all court rules, agency rules and statutes, as well as the Utah State Bar's Rules of Professional Conduct.

The following guidelines for the utilization of legal assistants were also adopted by the Bar:

#### **GUIDELINES FOR THE UTILIZATION OF LEGAL ASSISTANTS.**

By authority of Rule C 24, Rules of Integration and Management of the Utah State Bar, the following Guidelines for Utilization of Legal Assistants govern members of the Utah State Bar and Legal Assistant Affiliates:

A - Legal assistants shall:

1. Disclose their status as legal assistants at the outset of any professional relationship with a client, other attorneys, a court or administrative agency or personnel thereof, or members of the general public;

*"[S]upervising or responsible attorneys are responsible for all work undertaken by Legal Assistant Affiliates for or on their behalf and for violation of The Guidelines for the Utilization of Legal Assistants."*

2. Preserve the confidences and secrets of all clients; and
3. Understand the Rules of Professional Conduct, as amended and these guidelines in order to avoid any action which would involve the attorney in violation of the Rules, or give the appearance of professional impropriety.

B - Legal assistants may perform services for an attorney in the representation of a client, provided:

1. The services performed by the legal assistant do not require the exercise of independent professional legal judgment;
2. The attorney maintains a direct relationship with the client and maintains control of all client matters;
3. The attorney supervises the legal assistant;
4. The attorney remains professionally responsible for all work on behalf of the client, including any actions taken or not taken by the legal assistant in connection therewith; and
5. The services performed supplement, merge with and become the attorney's work product.

C - In the supervision of legal assistants, attorneys shall:

1. Design work assignments that correspond to the legal assistants' abilities, knowledge, training and experience;
2. Educate and train the legal assistant with respect to professional responsibility, local rules and practices, and firm policies;
3. Monitor the work and professional conduct of the legal assistant to ensure that the work is substantively correct and timely performed;
4. Provide continuing education for the legal assistant in substantive matters through courses, institutes, workshops, seminars and in-house training; and
5. Encourage and support membership and active participation in professional organizations.

D - Except as otherwise provided by statute, court rule or decision, administrative rule or regulation or the attorney's Rules of Professional Conduct; and within the preceding parameters and proscriptions, a legal assistant may perform any function delegated by an attorney, including but not limited to the following:

1. Conduct client interviews and maintain general conduct with the client after the establishment of the attorney-client relationship, so long as the client is aware of the status and function of the legal assistant, and the client contact is under the supervision of the attorney;
2. Locate and interview witnesses, so long as the witnesses are aware of the status and function of the legal assistant;
3. Conduct investigations and statistical and documentary research for review by the attorney;
4. Draft legal documents for review by the attorney;
5. Draft correspondence and pleadings for review by and signature of the attorney;
6. Summarize depositions, interrogatories and testimony for review by the attorney;
7. Attend executions of wills, real estate closings, depositions, court or administrative hearings and trials with attorney;
8. Author and sign letters provided the legal assistant's

*"With regard to licensing, the LAD Board believes that more research and time must be spent before any steps are taken in that direction . . . ."*

status is clearly indicated and the correspondence does not contain independent legal opinions or legal advice; and

9. Conduct legal research for review by the attorney.

E - A lawyer may not split legal fees with a legal assistant nor pay a legal assistant for the referral of legal business. A lawyer may compensate a legal assistant based on the quality of the legal assistant's work and the value of that work to a law practice. A lawyer may not compensate a legal assistant based solely upon a quota of revenues generated for the firm by a legal assistant's work on a specific case or a group of cases within a certain prescribed time period, although a legal assistant may participate in a firm's profit sharing plan.

Guidelines tailored to a specific practice area may be promulgated from time to time to further guide the Bar in the proper utilization of legal assistants subject to review by the Supreme Court Advisory Committee and the Utah Supreme Court.

With regard to licensing, the LAD Board believes that more research and time must be spent before any steps are taken in that direction and the Board of the LAD will not take a position, one way or the other, without hearing from its members. The LAD Board understands the need for access to justice and supports the Bar in its efforts to fill that need. However, the LAD

Board is not convinced, at this point in time, that licensing is the solution. Unfortunately, the LAD Board also recognizes that there will always be individuals, calling themselves legal assistants, who are not qualified and do not feel the need to follow any ethical standards. As a result of this, at some point in time, the Bar, or perhaps the State of Utah, will take steps to protect the public. The LAD intends to be directly involved in whatever occurs.

The LAD believes that the new structure of the division gives its members the professional recognition they have earned through education and hard work over the years. Everyone who has participated in the creation of the division should be proud of their accomplishments.

The LAD was created for the advancement of legal assistants in the legal profession. However, it is only as good as its members make it. Member and attorney involvement are essential to the forward movement experienced by this division thus far.

Although it is not known at this time what direction will be taken with regard to the regulation of legal assistants in the State of Utah, the LAD will continue to work directly with the Bar and attempt to do what its members direct. The Board of the LAD welcomes and encourages comments and suggestions.



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## Another Year Brings Another Bar Foundation Luncheon



*Judge J. Thomas Greene, speaker*



*Trustee Stewart M. Hanson, Jr. presenting Foundation service award to Jane A. Marquardt*



*Wilson Yellowhair, recently named Director of DNA People's Legal Services (one of the Foundation's recipients) and H. James Clegg, President, Utah Bar Foundation*



*Former trustees of the Bar Foundation (l-r) Richard C. Caboon, Judge Norman H. Jackson, Carman E. Kipp, James B. Lee, Harold G. Christensen and John W. Lowe*

Getting a jump on the holiday season, the Utah Bar Foundation hosted its annual lunch on November 30th, honoring Senior Judge J. Thomas Greene, a president of the Foundation in the early 1970's and a trustee through most of the 1980's. Judge Greene, prevailed upon by President James Clegg to offer some remarks, first regaled the attendees with a variety of scenarios demonstrating humor in the courtroom. He concluded, however, with three important admonitions: 1) Don't trivialize or treat important matters lightly or cavalierly; 2) Don't joke about sex, race, or religion; and 3) Don't take yourself too seriously.

Judge Greene then reviewed the nature of the adversary system, including the critical need for zealous advocacy "even though a defendant may have admitted guilt to the lawyer or has expressed the desire to plead guilty." That the attorney is the linchpin of the system can best be seen, according to Judge Greene, when a person discovers that he or she has a legal problem requiring a lawyer's expertise. He observed, "This may explain why even though lawyers as a whole are held in low esteem the overwhelming response in lawyer polls is that Americans hold their own lawyers in very high esteem. In this regard, the things we are most prone to criticize about our adversary system are also the things we most love about it when we are the

ones in trouble, or we need to redress a grievance.”

In addition to honoring Judge Greene, the Foundation recognized Jane Marquardt for her substantial contributions, both as President of the Foundation and as a trustee for six years. Finally, scholarships and ethics awards given to law students at both the University of Utah and Brigham Young University were recognized.

The Bar Foundation is indeed alive and well, this year distributing in excess of \$325,000, primarily to organizations providing legal assistance to those unable to otherwise afford it. Your IOLTA contributions are currently supporting work ranging from legal aid to low-income persons in rural southeastern Utah (DNA People's Legal Services) to similar help in the most densely-populated areas of Salt Lake (Legal Aid Society, Utah Legal Services). The Foundation also funds immigration assistance (A Welcome Place) and outreach to minorities (Disability Law Center) as well as citizenship education in the public schools (Law-Related Education Project), the work of the Senior Lawyers Volunteer Project, the Task Force on Racial and Ethnic Fairness, the Bar's Needs of Children committee, and Utah Dispute Resolution.

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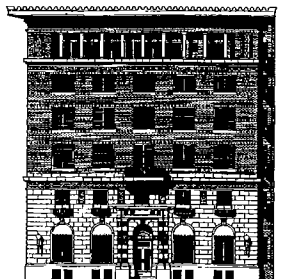
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 (To register, please call 1-800-CLE-NEWS)

CLE Credit: 3.0 HOURS

## ALI-ABA SATELLITE SEMINAR: EMPLOYEE BENEFITS CHANGES FOR 1999

Date: Thursday, February 11, 1999  
 Time: 10:00 a.m. to 2:00 p.m.  
 Place: Utah Law & Justice Center  
 Fee: \$165.00 per program; \$125.00 for government employees; \$50.00 for students  
 (To register, please call 1-800-CLE-NEWS)

CLE Credit: 4.0 HOURS PER PROGRAM

## NLCLE WORKSHOP AND PRIMER: REAL PROPERTY

Date: Thursday, February 25, 1999  
 Time: 5:30 p.m. to 8:30 p.m.  
 Place: Utah Law & Justice Center  
 Fee: \$30.00 for members of the Young Lawyers Division; \$60.00 for nonmembers

CLE Credit: 3.0 HOURS CLE/NLCLE

## MID-YEAR CONVENTION, ST. GEORGE, UTAH, MARCH 4 THROUGH 6, 1999

## LAW AND ECONOMIC SOCIETY: THE LAW AND ECONOMICS OF CONSTRUCTION CLAIM DAMAGES, PAUL FICCA, ARTHUR ANDERSON

Date: Thursday, March 11, 1999  
 Time: 12:00 p.m.  
 Place: Utah Law & Justice Center  
 Fee: \$30.00 includes lunch

CLE Credit: 1 HOUR

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

Date: Tuesday, March 16, 1999  
 Time: 10:00 a.m. to 2:00 p.m.  
 Place: Utah Law & Justice Center  
 Fee: \$165.00 per program

(To register, please call 1-800-CLE-NEWS)

CLE Credit: 4 HOURS

*Those attorneys who need to comply with the New Lawyer CLE requirements, and who live outside the Wasatch Front, may satisfy their NLCLE requirements by videotape. Please contact the CLE Department (801) 297-7033, 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 Connie Howard, CLE Coordinator, at (801) 297-7033. **Registration is not considered final until payment is received.***

## CLE REGISTRATION FORM

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

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

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

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

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

**ALI-ABA SATELLITE SEMINAR: LIMITED LIABILITY ENTITIES: LLCs, LLPs, AND OTHER UNINCORPORATED BUSINESS ENTITIES**

Date: Thursday, March 25, 1999  
Time: 10:00 a.m. to 2:00 p.m.  
Place: Utah Law & Justice Center  
Fee: \$165.00 per program  
(To register, please call 1-800-CLE-NEWS)  
CLE Credit: 4 HOURS

**NLCLE WORKSHOP AND PRIMER: LABOR & EMPLOYMENT**

Date: Thursday, March 25, 1999  
Time: 5:30 p.m. to 8:30 p.m.  
Place: Utah Law & Justice Center  
Fee: \$30.00 for members of the Young Lawyers Division;  
\$60.00 for nonmembers  
CLE Credit: 3.0 HOURS CLE/NLCLE

**ALI-ABA SATELLITE SEMINAR: COPYRIGHT & TRADE-MARK LAW FOR THE NONSPECIALIST – UNDERSTANDING THE BASICS**

Date: Thursday, April 8, 1999  
Time: 9:00 a.m. to 4:00 p.m.  
Place: Utah Law & Justice Center  
Fee: \$249.00 per program  
(To register, please call 1-800-CLE-NEWS)  
CLE Credit: 6.0 HOURS

**NEW PROGRAM – NATIONAL PRACTICE INSTITUTE: ACCOUNTING FOR LAWYERS**

Date: Friday, April 23, 1999  
Time: 9:00 a.m. to 5:00 p.m. (8:30 registration and continental breakfast)  
Place: Utah Law & Justice Center  
Fee: \$206.25 in advance (\$216.25 door); \$186.25 in advance (\$196.25) if you are registering three or more people at the same time from the same office or were admitted to practice after June 1, 1997. To register by credit card call 1-800-328-4444 or FAX to 1-612-349-6561 or send check to National Practice Institute, 701 Fourth Avenue South, Suite 800, Minneapolis, MN 55415-1634  
CLE Credit: 7.5 HOURS

**NLCLE WORKSHOP AND PRIMER: ESTATE PLANNING**

Date: Thursday, April 22, 1999  
Time: 5:30 p.m. to 8:30 p.m.  
Place: Utah Law & Justice Center  
Fee: \$30.00 for members of the Young Lawyers Division;  
\$60.00 for nonmembers  
CLE Credit: 3.0 HOURS CLE/NLCLE

**ALI-ABA SATELLITE SEMINAR: DRAFTING AND ENFORCING TRADEMARK, COPYRIGHT AND SOFTWARE LICENSING AGREEMENTS**

Date: Thursday, May 6, 1999  
Time: 9:00 a.m. to 4:00 p.m.  
Place: Utah Law & Justice Center  
Fee: \$249.00 per program  
(To register, please call 1-800-CLE-NEWS)  
CLE Credit: 6.0 HOURS

**NEW LAWYER MANDATORY SEMINAR**

Date: Friday, June 11, 1999  
Time: 8:00 a.m. to 12:00 p.m.  
Place: Westminster College, Gore Auditorium (Note change of location)  
Fee: \$40.00  
CLE Credit: *Fulfills New Lawyer Ethics Requirements*

**NEW LAWYER MANDATORY SEMINAR**

Date: Friday, November 5, 1999  
Time: 8:00 a.m. to 12:00 p.m.  
Place: TBA  
Fee: \$40.00  
CLE Credit: *Fulfills New Lawyer Ethics Requirements*

*(To register, please send in your registration to the Utah State Bar with your name and Bar number.) All New Lawyers in Utah are required to attend one Mandatory Seminar during their first compliance period.*

**Watch for a mailer on NLCLE Workshops and Primers for 1999 and access this at [www.utahbar.org/members/nlcle](http://www.utahbar.org/members/nlcle)**

## Classified Ads

### RATES & DEADLINES

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

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

*Utah Bar Journal* and the Utah State Bar 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.

### BOOKS FOR SALE

Federal Supplement (1-991), Federal Reporter 2nd (1-999), 3rd (1-139); U.S. Supreme Court Reports (Lawyer's Edition) (1st-1-100; 2nd 1-140); Federal Digest (1-72); Modern Federal Practice Digest (1-58); Federal Practice Digest 2nd (1-92), 3rd (1-120), 4th (1-105). Excellent condition; competitively priced. Contact Jan Drake, (801) 533-0066 or [drake@chapman.com](mailto:drake@chapman.com).

### POSITIONS SOUGHT

**CONTRACT WORK;** Ease your workload and let us help you. Small firm with civil and criminal experience is available for contract work at reasonable rates. Services include research, document drafting, appeals, and court appearances. Overson, Bray & Hanseen, L.L.C., 1366 Murray-Holladay Road, Salt Lake City, Utah 84117 (801) 277-0325.

### OFFICE SPACE WANTED

Senior attorney interested in relocating practice to Salt Lake City or Ogden areas. Current practice includes Aviation, Federal and State Worker's Compensation, Employment Law, Personal Injury, and Criminal Law. Wendell K. Smith, 275 East 850 South, Richmond, UT, 84333 (435) 258-0011, Fax (435) 258-2182, E-Mail [wksmith@mtwest.net](mailto:wksmith@mtwest.net).

### OFFICE SPACE / SHARING

Share Sandy office space with two established attorneys. Copier, fax, conference room. Call Bryan or Sandra at (801) 255-7475.

Deluxe office space for one attorney. Share with three other attorneys. Includes large private office, reception area, parking immediately adjacent to building, computer networking capability, law on disc, fax, copier, telephone system. Easy client access in the heart of Holladay. Must see to appreciate. 4212 Highland Drive. Call: (801) 272-1013.

Deluxe office space available in Broadway Centre downtown. Share with four other attorneys. Facilities include receptionist, conference room, fax, copier, telephone system, free gym facilities, close proximity to courts, secretarial station and storage. Call 575-7100.

Attorney office sharing with conference room, receptionist, good off-street parking, copier and fax. Close to courts and law library. Call (801) 355-5300.

**ATTORNEY/PROFESSIONAL: SHARE DOWNTOWN OFFICE SPACE** with two established attorneys. Rent includes receptionist, parking, conference room, copier, fax, kitchen and library. Inquiries call: (801) 579-0600.

Exchange Place Historical Bldg., located half a block from new courts complex, has 844 sq. ft. office space, includes reception area, small conference room for \$975.00 month, and a 480 sq. ft. space for \$750 a month, and 350 sq. ft. space for \$380.00. Receptionist, conference room, fax, copier, and library are negotiable. Parking available. Contact Joanne Brooks @ (801) 534-0909.

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Deluxe downtown office space for one or two attorneys to include some secretary support area, within walking distance to state and federal courts. Share with four to five other attorneys. Includes reception area, parking adjacent to building with law on disc available, fax, copier, and telephone system. Call (801) 532-1601.

**SHARE OFFICE SPACE** with two established attorneys. Walk to State and Federal Courthouses. Judge Building, Third South and Main. Office overlooks Third South. Copier, fax conference room, secretarial desk. Call Steve @ (801) 554-8252.

#### SERVICES

**LOANS** for plaintiffs in a person injury lawsuit. Delaware Funding (801) 532-6545.

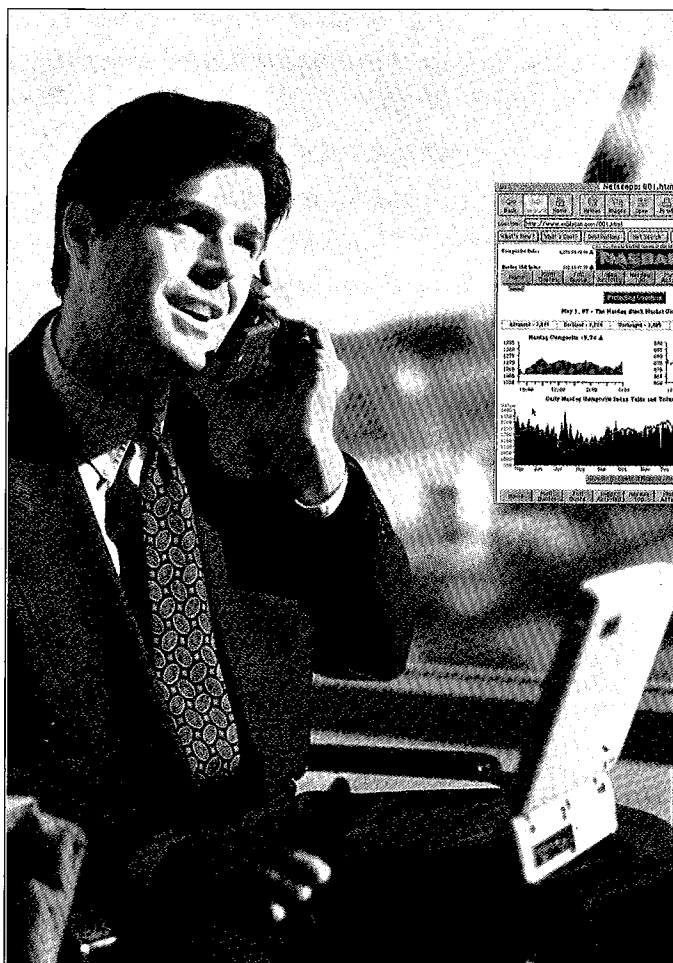
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#### APPRAISALS: CERTIFIED PERSONAL PROPERTY

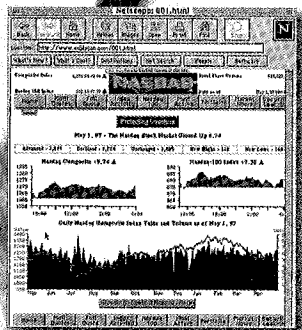
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**SEXUAL ABUSE-CHILD ABUSE/DEFENSE: IMPEACH** child's out-of-court testimony. **IDENTIFY** sources of error with interviewer questioning, bias, props, and procedures. **ASSESS** statement reliability and contamination. **DETERMINE** origin of allegations and alternative hypotheses. Bruce Giffen, M.Sc. Evidence Specialist. American Psychology-Law Society. (801) 485-4011.

**LOOKING** for a will executed by Farrell Gene Hatfield, of Mapleton, who is recently deceased. Please contact attorney Craig Bainum at (801) 375-7680.



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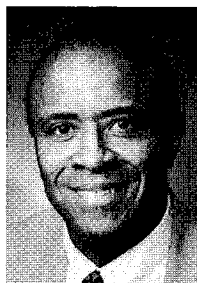


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# Get To Know Your Bar Staff



## BILLY WALKER

Billy Walker was produced by Mr. and Mrs. Walker in Dallas, Texas. He was for the most part directed by Mrs. Walker and attended Compton High School in Southern California.

Billy earned a Bachelor of Arts degree in economics from Stanford University. He earned a Juris Doctorate from the University of Utah.

In 1981, Billy was admitted to the Utah State Bar. He began his legal career as an Assistant Attorney General with the Utah Attorney General's Office. Through 1984, as an Assistant Attorney General, he represented and litigated on behalf of the Department of Human Services and the University of Utah.

From 1985 to 1988, Billy served as an Administrative Law Judge. In this position, he conducted personnel and social services hearings throughout the State of Utah for the Executive Director of the Department of Human Services.

From 1988 to 1992, Billy served as the Deputy Commissioner for the Utah Department of Financial Institutions. His duties included financial institution regulatory general counsel and litigation on behalf of the Commissioner and Department of Financial Institutions.

In 1992, Billy returned to the Utah Attorney General's Office as an Assistant Attorney General and Salt Lake Section Chief for the Human Services Division. As Section Chief, he litigated on behalf of the Utah State Office of Recovery Services and supervised the Salt Lake attorneys who represented the Office of Recovery Services in its child support collection efforts. In 1993, Billy was promoted and appointed as Division Chief over the newly formed Child and Family Support Division. As Division Chief, his duties expanded to include the statewide supervision of attorneys who represent the Office of Recovery Services.

Billy joined the Utah State Bar's Office of Professional Conduct in 1998, where he serves as Senior Counsel. In this position, he supervises the office and along with staff he investigates and prosecutes complaints against attorneys.

Billy enjoys watching college basketball, football, baseball, Michael Jordan playing basketball and Tiger Woods playing golf. He enjoys playing golf and hates all aspects of soccer. He is married to Geri, the one attorney in Utah that he personally will not prosecute in his new position. They have two children,

Matthew "The Prince of Bel Air" Walker (age 6) and Alexis "Queen Latifa" Walker (age 4).

## DANA KAPINOS

Dana serves the Bar as a secretary assigned to the Office of Professional Conduct, where she works most closely with Billy Walker, Carol Stewart, and Kate Toomey. She has been with the Bar for nearly three years, but continues to make an effort towards earning a paralegal certificate from Salt Lake Community College. Although the attorneys with whom she works think she's a terrific secretary, Dana is an admitted killer of houseplants, for which she feels no remorse.

Although she is not a native Utahn, Dana moved to Salt Lake City with her parents when she was just six years old. She was born in Gallup, New Mexico, but her family moved to this area so that her father could pursue a career as a fireman, and so that she and her sister would benefit from Utah's superior public education system. As an adult, Dana's roots here are permanent: she and her mechanical engineer husband live in the south part of the valley, where they have bought a house.

Dana loves to travel, and recently spent a relaxing vacation at the beach in Florida, followed by several exciting days in New Orleans. To say that she and her husband are Jimmy Buffet fans is a gross understatement, inasmuch as they make a near-Herculean effort to attend the annual "phlocking" (festival) for Parrot-Heads (Buffet fans) in Key West.

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E-mail: info@utahbar.org

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Kim L. Williams (Wed. & Fri.)  
Tel: 531-9077

**Other Telephone Numbers & E-mail Addresses Not Listed Above**

Bar Information Line: 297-7055  
Web Site: www.utahbar.org

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

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

**Office of Professional Conduct**  
Tel: 531-9110 • Fax: 531-9912  
E-mail: oad@utahbar.org

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*Senior Counsel*  
Tel: 297-7039

Carol A. Stewart  
*Deputy Counsel*  
Tel: 297-7038

Charles A. Gruber  
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# 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  
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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.

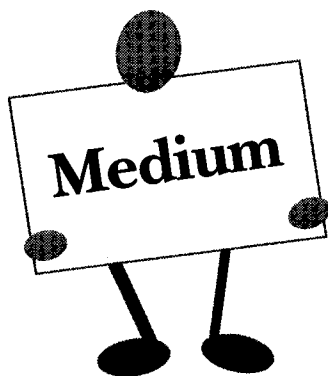
THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION SEE REGULATION 4(d)-101 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.

**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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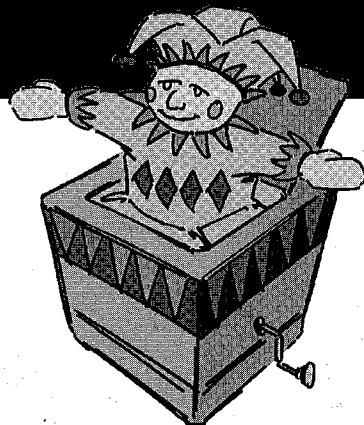
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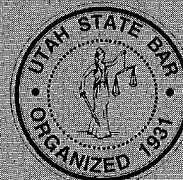
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