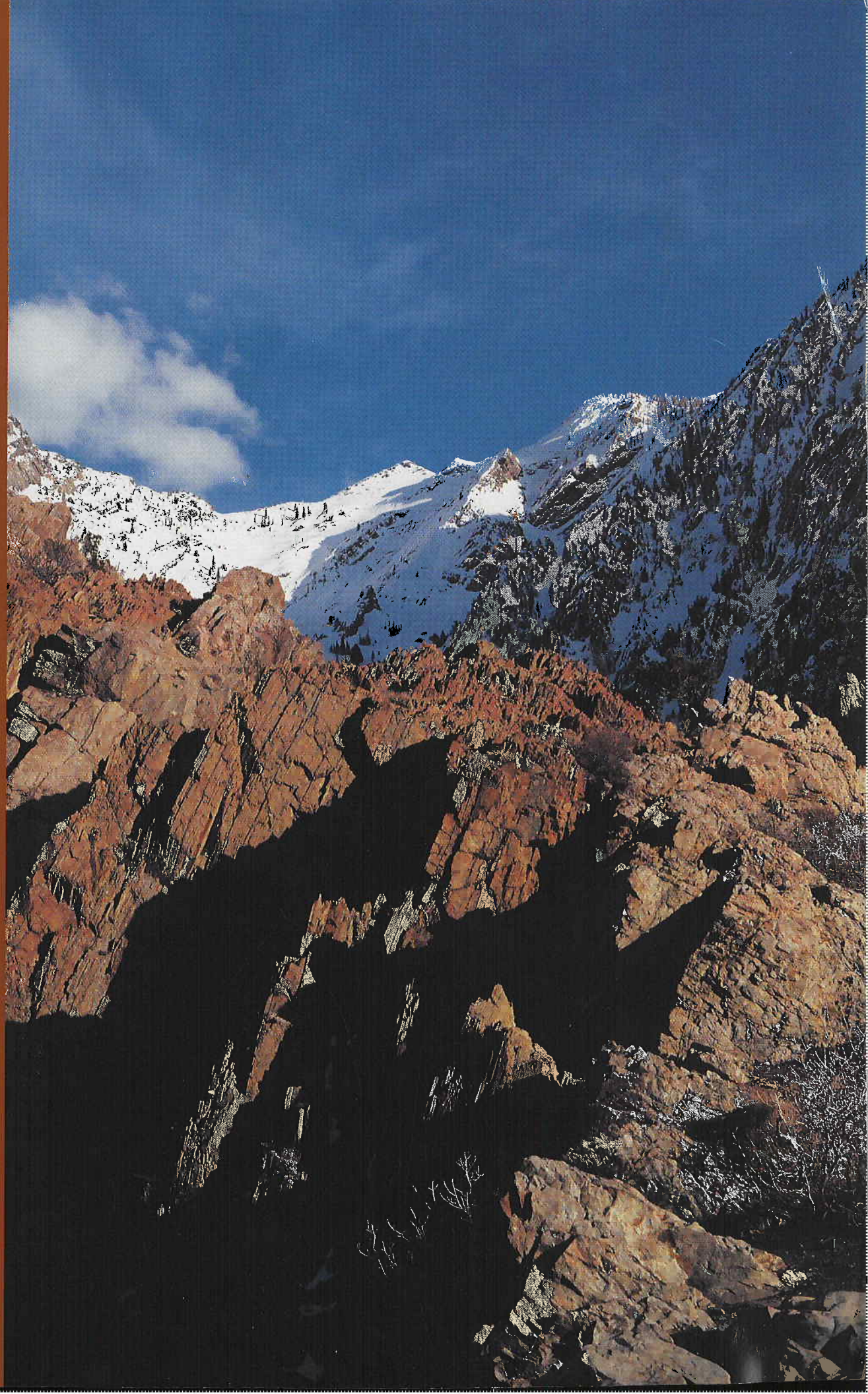


# Utah Bar Journal

Volume 13 No. 1  
January 2000





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

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

**COVER:** Stairs Gulch, Big Cottonwood Canyon, Utah by Kerry P. Eagan, Utah State Bar member, Chief Administrative Officer of Lancaster County, Nebraska.

The *Utah Bar Journal* is published monthly by the Utah State Bar. One copy of each issue is furnished to members as part of their Bar dues. Subscription price to others, \$50.00; single copies, \$5.00. For information on advertising rates and space reservation, call or write the Utah State Bar offices.

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## Letters to the Editor

Dear Editor,

I read with interest President Brown's message about "Access to Justice Issues." I noted that there is a plan to take \$60,000 in "seed money" from the Bar and another \$30,000 from United Way "to retain consultants to evaluate the mechanism and logistics of a central intake unit . . . ."

Rather than give the money to "consultants," why not use it to *pay* for pro bono legal services? That is one sure way to make those services available, and the program would be easy to administer. The Bar Commission could simply "fix" fees for certain types of pro bono services and publish the schedule of fees in the *Bar Journal*.

I have a feeling that it would be easier to get attorneys to provide pro bono services if they knew they were getting something. If there were no takers, nothing would be lost in trying.

I am sure that \$90,000 would not come close to eliminating the need for pro bono services, but it wouldn't hurt. And it might actually set an example that would encourage other contributors, me included. I would much rather see that money go to some hard-working lawyer who is helping a pro bono client than some "consultant" who does nothing to actually deliver pro bono services.

Donald L. Dalton

## Letter to the President

*Editor's Note: Bar President Charles R. Brown asked the Bar Journal to print the following letter on this important topic, along with his response.*

Dear President Brown,

On September 24, 1999, the Utah State Bar Commission met in Ogden, Utah at [a] regularly scheduled meeting, and by a vote of 7 to 4, committed the over six thousand members of the Utah Bar Association to financing legal services for the poor and indigent out of our bar dues. To be fair to the Commission, the vote specifically authorizes a \$60,000.00 appropriation to be used to set up a body or organization, independent of the bar association to screen potential pro bono litigants and refer them to indigent legal services agencies. However, it is clear that the philosophy of many of the commissioners is such that they fully intend to commit the Utah Bar Association to funding indigent legal services from bar dues now, and in the future.

In our view, this decision is unfortunate. Little or no attempt was ever made by the Bar Commission to canvass or survey the members of the association and ask for input over such an important move. This action demonstrates that some bar commissioners have become too far removed from the day-to-day realities that the average lawyer and member of the association face. At best, such an action took place out of ignorance. At

## The Utah Bar Journal

### Published by The Utah State Bar

645 South 200 East • Salt Lake City, Utah 84111  
Telephone (801) 531-9077 • [www.utahbar.org](http://www.utahbar.org)

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worst, the decision shows a disdain for the true needs and opinions of the membership.

To begin with, the decision is philosophically wrong. Members should be encouraged to perform pro bono legal services. It is appropriate for the Bar to maintain a pro bono services coordinator and to encourage members to personally choose to perform more pro bono work than they are currently doing. However, it is wrong to do things which, in effect, mandate pro bono work, since those members who disagree with the decision have no choice, but to contribute their bar dues anyway.

Many of the members in this association feel that bar dues right now are too high. Many of us remember a few years ago, when the association doubled dues to finance the construction of the Law & Justice Center. A decision to commit substantial amounts of our financial resources to a project such as "Access to Justice" can only help bring about another unjustified increase in dues and at a date not too far in the future. Additionally, if this does not occur, the Bar's only other recourse will be to cut the budget for programs that actually do provide a direct benefit to attorneys who belong to the association.

The Utah State Bar Commission's vote on September 24, 1999 to fund "Access to Justice" is a mistake. The Commission should rescind this vote posthaste.

Concerned Members, Weber County Bar

Bruce Stratford	Mark H. Gould
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Robin Nalder	Randall Richards
Ronald Reiss	Michael Howard
Maurice Richards	J.D. Poorman
Edward Dresch	Noel Hyde
Paul Johnson	Elwood Powell
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Concerned Members, Weber County Bar

Dear Sirs and Madam:

I would like to respond to your letter of October 20, 1999. At the Bar Commission meeting held in Ogden on September 24, 1999, the Commission received a request for funding to facilitate certain aspects of the recommendations included in the Access to Justice Task Force Report which was presented to the Bar and approved by the Bar Commission in September, 1997. The minutes reflecting that discussion and the action taken by the Commission are set forth below:

Carol Clawson appeared on behalf of the And Justice for All Foundation to present a proposal to the Commission requesting a grant of funds and other assistance. Access to Justice Foundation Chairman Dennis V. Haslam joined the meeting by telephone. Clawson proposed that the And Justice for All campaign and the Access to Justice Foundation evaluate and pursue during the next year the goal of merging the two organizations. Clawson's proposal specifically requested that the Bar Commission provide \$60,000 in seed money plus an allocation of 80% of Toby Brown's time for a one year period, paid for by the Bar, to pursue the merger of the two organizations and to evaluate the viability and logistical structure of a comprehensive, statewide "Central Intake System" to process and allocate requests in order to better and more efficiently deliver legal services throughout the state to the poor and people with disabilities.

The Commission discussed whether some or all of the grant, if made, should be designated as coming from non-dues. It was noted that ultimately all revenues were fungible in that their expenditure had the same effect on the bottom-line. Debra Moore made a motion which was seconded by Denise Dragoo, to provide a *one time* grant of \$60,000, without designating the source of the funds, and to allocate 80% of Toby Brown's time for a *one year period* for those purposes, with details concerning the timing and number of payments to be worked out under the direction of the Executive Committee. *The motion carried.* [emphasis supplied]

As I am sure you are aware, the action taken by the Commission was not an ad hoc action taken in a vacuum. That action was as a result of and consistent with the recommendations of the Access to Justice Task Force, which was formed in 1996 and was chaired by then Chief Justice Michael D. Zimmerman and former Bar President Dennis V. Haslam. During the delibera-



tions of the Task Force, hearings were held throughout the state and members of the Bar were given an opportunity to participate and comment. There were also numerous articles in the *Bar Journal* on the topic. The Bar Commission, after lengthy discussion and review, adopted the recommendations of the Access to Justice Task Force and committed to work with the various interested agencies and parties in implementing those recommendations. The report of the Access to Justice Task Force was posted on the Bar's website and has been available for review by members of the Bar.

When the Bar Commission initially approved the Access to Justice Task Force Report, there was no approval for funding or a specific economic commitment by the Bar. Since that time there has been a continuing dialogue among representatives of the Bar, the And Justice for All Foundation and the various agencies providing legal services to the disadvantaged regarding the principal recommendation of the Access to Justice Task Force. That key recommendation was to evaluate and, if appropriate, facilitate a statewide "Central Intake System" to centralize and improve the efficiency of responding to and delivering legal services to the disadvantaged throughout the state. Absent a continuation of that commitment to evaluate a Central Intake System, the recommendations and work of the Access to Justice Task Force would be meaningless.

The minutes of the action taken by the Commission at the September 24, 1999 meeting make it clear that the commitment is for a one-time grant of \$60,000 and a one-time grant of 80% of Toby Brown's time, which will be utilized in conjunction with a grant of \$30,000 by United Way in order to evaluate and, if possible, implement the Central Intake System. There has been no further commitment by the Bar Commission to extend additional funds. We are optimistic that the Central Intake System will prove viable and can be implemented. That, together with the contemplated merger of the Access to Justice Foundation and the And Justice for All Foundation may allow us to accomplish the goal of providing a more efficient mechanism of delivering legal services to those in need without, we hope, the necessity of further economic assistance by the Bar. The grant made by the Commission at that meeting is not a funding of pro bono legal services, it is a continuation and implementation of a commitment made in adopting the Access to Justice Task Force Report to create a better system for providing legal services to the disadvantaged in this state.

Unfortunately, since the commitment of the Bar at its September 24, 1999 meeting, Toby Brown has opted to pursue other

opportunities outside the Bar and the commitment by the Bar Commission to provide 80% of Toby's time is no longer possible. Representatives of the Bar are currently meeting with the representatives of the And Justice for All Foundation and the related agencies to evaluate how the Bar may assist them in moving forward with the feasibility analysis of a "Central Intake System" without the anticipated contributions of Toby Brown. That aspect of the commitment made by the Bar Commission is still being evaluated.

As I have explained in my prior President's letters, my commitment as President is to make sure we have open communication with our members and that, in making any decisions, we always consider your interest as dues paying members. I appreciate your letter and understand your concerns. However, I do not agree with your conclusion that the Bar Commission has, in fact, made a decision "to commit the Utah Bar Association to funding indigent legal services from Bar dues now, and in the future." I also respectfully, but strongly, disagree with your statement that "At best, such an action took place out of ignorance." As noted above, there was an exhaustive evaluation and commitment which preceded this action.

I can assure you that the Bar Commission is very aware of our budgetary needs and limitations and that there has been no present commitment to permanently fund indigent legal services from Bar dues. The action taken was a continuation of a commitment made to evaluate a process for improving the efficiency of the system to provide legal services to the disadvantaged. If that systemic solution can be realized, it is our hope that the system for providing such services will become self-sufficient and will not need to be dependent upon continued funding by the Bar, from members' dues or otherwise, as opposed to voluntary contributions from individual members.

Thank you for your interest. In order to fully communicate this issue to all members I have requested that your letter and this response be published in the January *Bar Journal*. As always, I remain available to discuss this and any other issues of concern at your convenience.

Charles R. Brown

### Letters Submission Guidelines:

1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.
2. No one person shall have more than one letter to the editor published every six months.
3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal* and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.
4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the Rules of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Bar Commissioners or any employee of the Utah State Bar to civil or criminal liability.
6. No letter shall be published which advocates or opposes a particular candidacy for a political or judicial office or which contains a solicitation or advertisement for a commercial or business purpose.
7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the Editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.
8. The Editor, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected.

### Cover Art

Members of the Utah State Bar who are interested in having their photographs of Utah scenes published on the cover of the *Utah Bar Journal* should contact Randall L. Romrell, 2890 East Cottonwood Parkway, Mail Stop W 250, Salt Lake City, Utah 84121, (801) 333-5691. Send a print, transparency, or slide of each scene you want to be considered. If you would like your photograph returned, enclose a self-addressed, stamped envelope.

### Interested in writing an article for the *Bar Journal*?

The Editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine.

If you have an article idea or would be interested in writing on a particular topic, contact the Editor at 532-1234 or write *Utah Bar Journal*, 645 South 200 East, Salt Lake City, Utah 84111.

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### *Current Issues of Interest*

by Charles R. Brown

In my original President's message, I noted that my principal focus as President is to improve the communications process of the Bar Commission. As part of that continuing process I would like to bring you up to speed on current issues.

A leadership retreat organized by Commissioners Denise Dragoo and Sharon Donovan was held on October 1, 1999. Leaders of every section, committee and local bar were invited to the retreat to discuss issues of concern. We reviewed current issues as well as the communications process itself and how it may be improved. We conducted a survey of the leadership group during the retreat in order to determine what we do right and what we do wrong. We are in the process of evaluating the results of that survey and implementing some of those recommendations. After the retreat, follow-up letters were sent to each attendee advising them of the identities of their Bar staff and Commission liaisons.

As another aspect of our improved communications process we invited the members of the Supreme Court to attend the morning session of our October Bar Commission meeting. Chief Justice Howe, together with Justices Durham, Stewart, and Zimmerman attended that meeting. We had a very productive dialogue among the Justices and the Commissioners regarding various issues. Those included the state of the Bar budget and finances; the operations of the Office of Professional Conduct; the current status and recommendations regarding the Lawyers Helping Lawyers program; and various professionalism initiatives. I have committed to Chief Justice Howe that we will follow up that session with a presentation on additional issues at a conference of the Court once the new Justices have been seated. I am advised that a detailed dialogue of this nature among the Justices and the Commissioners has not occurred for many years.

The Bar Commission received a report from the Courts and Judges Committee regarding issues of concern in the new Scott M. Matheson Court Complex, and most particularly, Third District Court. We will be scheduling meetings among representatives of the Courts and Judges Committee, the Bar Commission, the Administrative Office of the Courts and the

Chief Judge of the Third District Court in order to evaluate and implement some of those recommendations.

The second goal of my presidency is to help our membership and the profession move into the next century. In November I attended the second bi-annual Seize the Future Conference sponsored by the Law Practice Management Section of the ABA. The consensus of that conference was that the issue of Multi-Disciplinary Practice is just the tip of the iceberg in our e-commerce directed world. We must attempt to understand the magnitude of changes that will face our profession as we approach the next century, and learn how to best position ourselves to adequately respond and adapt to those changes.

"The Future of Our Profession" will be the theme of the Annual Convention to be held at the Del Coronado Hotel in San Diego on July 12-15, 2000. Judge Alex Kozinski of the 9th Circuit Court of Appeals will be our keynote speaker. Judge Kozinski is a nationally renowned scholar who is rumored to be on the short list of Supreme Court candidates that may be considered by a Republican administration. He writes lucid opinions, many of which are witty and creative. He should be a very entertaining and informative speaker. We have tentatively scheduled as our Friday general session speaker William C. Cobb, a national consultant on the legal profession who chaired the Seize the Future conference. Mr. Cobb will present a "Wake Up Call for the Profession" and discuss the need to innovate in the 21st Century. After totally frightening everybody with Mr. Cobb's predictions, we plan to schedule numerous break-out sessions addressing technology, e-commerce, and other current issues in order to guide you into the 21st Century. Additionally, we have tentatively scheduled for our general ethics session on Saturday morning a presentation by Professors Paul Bergman and Michael Asimov of the U.C.L.A. Law School on "Reel Justice." Their presentation includes an analysis of movies dealing with the law such as "Anatomy of a Murder" and "A Time to Kill," evaluating





events that occur in those movies and applying them to current ethical rules. They will also be available for a break-out session with more entertaining aspects of the presentation of the legal profession in cinema, such as "My Cousin Vinny" and Woody Allen's "Bananas." We believe the convention will be informative and entertaining. The location isn't bad either.

The theme at the Mid-Year Convention, which will be held in St. George on March 9-11, 2000, is "Professionalism." The keynote speaker will be the Honorable Thomas A. Zlaket, Chief Justice of the Arizona Supreme Court, who is concerned about the future of the profession and has some very interesting and enlightening things to say.

Finally, after four years of intense and exhausting work, the Admissions Committee of the Bar, chaired by Steven T. Waterman, has totally revised the Instructions and Rules for Admission. The Bar Commission adopted those Instructions and Rules at its meeting on December 3, 1999, and they will be available on the Website for review by interested parties.

As always, I welcome any thoughts, comments, or rantings you may have on these and any other issues. Please do not hesitate to contact me.



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LINCOLN W. HOBBS AND GEORGE S. ADONDAKIS ARE ELATED TO ANNOUNCE THAT MARGARET H. OLSON HAS JOINED THE FIRM AS A MEMBER, AND THAT AKIKO KAWAMURA HAS JOINED THE FIRM AS AN ASSOCIATE.

Lincoln W. Hobbs, founding member and manager of the firm, was born in Salt Lake City in 1960. He received his J.D. from the University of Utah in 1986, and practiced with the firm of Winder and Haslam through March of 1999.

George S. Adondakis was born in Salt Lake City, Utah in 1965. He received his J.D. from the University of Washington in 1991. Since graduation, he has served as Assistant General Counsel for the University of Utah and has practiced with the firms of Ray, Quinney and Nebeker, and Winder and Haslam.

Margaret H. Olson was born in Provo, Utah in 1967. She grew up in Idaho Falls, Idaho and attended the University of Utah. Margaret received her B.A. in History in 1989 and her J.D. in 1992. Margaret was a prosecutor with the Salt Lake District Attorney's office, where she prosecuted felony jury trials. Margaret has been practicing with the firm of Winder and Haslam since 1997.

Akiko Kawamura was born in Tokyo, Japan in 1970. She was schooled in the United States, receiving a B.A. in English in 1992 and a M.A. in teaching in 1995 from Lewis and Clark College. She received her J.D. in 1999 from the University of Utah. Akiko is fluent in Japanese.

All members of the firm practice in general civil litigation, and Ms. Olson will continue her practice of civil and criminal law.



# *The Enlibra Doctrine and Preserving the Unique Rural Cultures of the West*

by Jeffrey B. Teichert

James Madison said that in great republics, policy makers are "too little acquainted with all their local circumstances and lesser interests," whereas in small republics, representatives may become "unduly attached to these [local interests] and too little fit to pursue great national objects."<sup>1</sup> Madison further observed that "[t]he federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the state legislatures."<sup>2</sup> The current national debate over environmental protection often results in poignant conflicts between the "great national object" of environmental protection and the "local circumstances" and unique rural cultures of the West.

## **The Enlibra Doctrine**

On February 24, 1998, the Western Governors' Association adopted a policy resolution ("Policy Resolution") entitled "Principles for Environmental Management in the West."<sup>3</sup> The principles embodied in this resolution have come to be known as the *Enlibra* doctrine,<sup>4</sup> and "are an attempt to create a centrist approach to environmental policy."<sup>5</sup> The first principle of this doctrine is "National Standards, Neighborhood Solutions—Assign Responsibilities at the Right Level." The Policy Resolution reads, in relevant part:

The federal government is responsible for setting environmental standards for national efforts. These standards should be developed in consultation with the states and in the form of scientifically justified outcomes. National standards for delegated programs should *not* include prescriptive measures on how they are to be met. States should have the option of developing plans to meet those standards and ensuring that the standards are met. *Planning at the state level is preferable because it allows for greater consideration of ecological, economic, social and political differences that exist across the nation. A state can tailor its plans to meet local conditions and priorities, thereby ensuring broad community support and ownership of the plans. States can also work together to address conditions and issues that cross their boundaries. It is appropriate for the federal government to provide funds and technical assistance within the con-*

text of a state plan to achieve national standards. In the event that states do not want to develop their own plans the federal government should become more actively involved in meeting the standards.<sup>6</sup>

(Emphasis supplied). Among the purposes of this doctrine is to "protect the heritage and traditions in the West that are valued and advance the kind of development that will maintain the region's extraordinary quality of life."<sup>7</sup> The *Enlibra* doctrine recognizes that the West's "historic base of natural resource-related industries such as farming, fishing, mining, wood products, and tourism remain central to its economy," but also recognizes the increasing diversity and transiency of the western economy and the resulting complexity of political issues surrounding natural resource utilization.<sup>8</sup>

The West is home to large cities, unique rural towns, and Native American tribal lands. It is as true today as it was in Madison's time that national representatives are "too little acquainted with all their local circumstances and lesser interests[.]"<sup>9</sup> Laws that apply uniformly throughout the republic can have disastrous, unforeseen, and unintended effects on unique local cultures when applied in particular cases. This is vividly apparent in Utah.

## **The Effect of Federal Environmental Law in Rural Communities**

On September 18, 1996, President Clinton used his powers under the Antiquities Act<sup>10</sup> to designate an unprecedented 1.7 million acres of public land in southern Utah as the "Grand Staircase-Escalante National Monument."<sup>11</sup> This new monument is approximately the same size as the states of Delaware and Rhode Island combined.<sup>12</sup> The President undertook this designation without informing the Governor or any member of the

JEFFREY B. TEICHERT is a public lands and natural resources litigation attorney with Budd-Falen Law Offices, P.C., in Cheyenne, Wyoming.





Utah congressional delegation.<sup>13</sup> Congressional investigations reveal that the Clinton Administration knew that "Utah's congressional delegation and the governor [would] be angered by the action,"<sup>14</sup> but went ahead with it in order to curry election-year favor with environmentalists in California, Washington, Oregon, Arizona, Colorado, New Mexico, and Nevada.<sup>15</sup> A congressional investigation, internal White House documents, and a report by U.S. News and World Report demonstrate that "the White House went to great lengths to keep secret its plan to create by executive fiat a massive 1.7 million acre national monument in southern Utah."<sup>16</sup>

Kathleen McGinty, the Chair of the President's Council on Environmental Quality ("CEQ") wrote in a confidential e-mail: "I will say again, any public release of information would probably foreclose the President's option to proceed."<sup>17</sup> McGinty provided this advice despite her concerns that "there is a danger of 'abuse' of the withdraw/antiquities authorities especially because these lands are not really endangered."<sup>18</sup> Similarly, Interior Department Solicitor John Leshy said, "I can't emphasize confidentiality too much. If word leaks out it probably won't happen."<sup>19</sup>

The administration feared that if news of the monument leaked to the public before the President's announcement, it would be perceived as "war on the west,"<sup>20</sup> and that "the Utah delegation [might] try efforts such as a rider on the Interior Appropriations bill . . . to prevent [the President] from taking such action."<sup>21</sup> One of the major reasons the President used the Antiquities Act to specially designate the Grand-Staircase area was to avoid the requirements of the National Environmental Policy Act ("NEPA"),<sup>22</sup> which would have required public disclosure and public comment, and would have entitled the State of Utah and affected local governments to participate as cooperating agencies in environmental studies and land use planning efforts. NEPA applies every time a decision by any federal agency constitutes "a major federal action[] significantly affecting the quality of the human environment."<sup>23</sup> Regulations under NEPA accord state and local governments joint planning authority if they have environmental protection or planning laws. Joint planning authority under NEPA requires federal agencies to:

*Cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements . . . Such cooperation shall to the fullest extent possible include:*

- (1) Joint planning processes.
- (2) Joint environmental research and studies.
- (3) Joint public hearings (except where otherwise provided for by statute).
- (4) Joint environmental assessments.<sup>24</sup>

One of the very purposes of NEPA is to "assure for all Americans safe, healthful, productive, and esthetically and *culturally pleasing* surroundings" and to "preserve important historic, *cultural*, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports *diversity and variety of individual choice*."<sup>25</sup>

The cooperation of state and local governments would have provided a better understanding of how to best protect the environment with sensitivity and accommodation to the unique local cultures, values, and economic circumstances of the southern Utah communities affected by the President's decision. These cultures include many people who work the land as their pioneer ancestors did before them,<sup>26</sup> and who share their ancestors' love of open spaces and freedom from oppression.<sup>27</sup>

*"Environmental laws implicate basic questions about the relationship of human beings and their communities with the land they live on."*

President Clinton designated the "Grand Staircase-Escalante National Monument" during a campaign-style television event at the Grand Canyon, and did not even visit Utah to announce his decision for fear of a hostile public reaction.<sup>28</sup> When the citizens of Kanab

learned of the monument designation, a hostile public reaction took place outside the scrutiny of the media. The entire town closed down and held a rally at Kanab High School, releasing black balloons "as a symbol of what had happened to Southern Utah."<sup>29</sup> The surprise monument designation threatened the loss of as many as 900 above-average salaries, the loss of a potential fifty percent increase in annual wages and salaries in Kane County, and the loss of 1.8 million dollars to local governments in the region of the monument.<sup>30</sup> These threatened losses were particularly serious in light of the fact that the three counties most seriously impacted "each suffer from subpar incomes (ranging from 26 to 41 percent below national averages) and limited growth," and had already been "hit hard by the Clinton Administration's efforts to shut down Western resource development" which had already caused business failures and significant economic dislocation.<sup>31</sup>

Environmental laws implicate basic questions about the relationship of human beings and their communities with the land they live on. Rigid application of national standards can, there-



fore, have unintended impacts on the unique rural, agricultural, and Native American cultures of the American West.

State governments, particularly in the West, historically have been deeply concerned with federal land use policies and for more than a century have pressed Washington for greater control over public lands within their boundaries. Since the public domain constitutes so large a portion of many western states, decisions made in Washington affecting land use can have an enormous economic, political, and social impact upon western governments.<sup>32</sup>

The sentiments of states in the West include both environmental concerns and economic issues. Former Colorado Governor Richard Lamm worried that western public lands would be reduced to an "energy colony" for more populous and politically powerful states,<sup>33</sup> and former Idaho Governor and United States Interior Secretary Cecil Andrus lamented that the United States Supreme Court may decide the fate of Idaho's National Forests with "map and crayon."<sup>34</sup>

### **The Importance of Protecting Unique Local Cultures**

The Catron County, New Mexico Land Use Plan explains the importance of culture in the context of environmental regulation:

Culture is a people's identity and the foundation upon which political society and an economy are built. Without culture, without commitment to democracy, devotion to equality, and celebration of political freedom, the people of Catron County would be something less than what de Toqueville defined to be American. The citizens of Catron County are inseparable from their culture. They are, first and foremost, Americans with a deep seated commitment to democracy, equality, and political freedom. They are also unique products of a complex web of land uses and practices, values and beliefs that nurture their communities, sustain their economies, empower their local government and give form and shape to their spiritual and physical environments.<sup>35</sup>

If western rural cultures are destabilized by externally imposed environmental policy, cultural values such as "self-sufficiency, hard work . . . community cohesion, collaboration and leadership associated with agrarian communities, could be altered."<sup>36</sup> These values are often grounded in an abstract "sense of

place," borne of family history, heritage, a sense of belonging, community loyalty, and personal identification with the land as "a central core of their identity."<sup>37</sup> "[P]lace makes them as much who they are as their own flesh and blood."<sup>38</sup> Assaults on "place . . . fracture the union of land and culture."<sup>39</sup> A separation of rural people from the land "would destroy the very identity of those people."<sup>40</sup> The value of a culture to its members cannot be understood in purely economic terms, since "human beings have been known to prefer death to violation of their cultural norms."<sup>41</sup> Many ranchers, for instance, would simply not sell their land "for any price."<sup>42</sup> Communities are most stable when cultures and customs are allowed to change through natural evolution or through the democratic processes of the communities themselves.<sup>43</sup> Uniform national environmental policies inject elements of outside control into the community, which are ultimately destructive to the local autonomy and cultural identity.<sup>44</sup>

Cultural resources are more than persisting fragments of antiquity. Culture is also a living entity, an organic and

*"Communities are most stable when cultures and customs are allowed to change through natural evolution or through the democratic processes of the communities themselves."*

changing set of values, beliefs, and social forms that add richness and diversity to modern life. Significantly, federal and state laws and policies frequently ignore or dismiss the importance of contemporary culture in the management of federal and state trust lands. They preclude its

contribution, not only to the meaning and worth of local community, but its significance to society at large. Moreover, they neglect the potential it holds for improving land stewardship and enhancing the environmental potential of public lands for all Americans.<sup>45</sup>

Unique local cultures are not only important to their own members, but also contribute to "humanity's rich diversity" and provide "a promising alternative to escalating homogenization of society."<sup>46</sup> A diversity of subcultures contributes to the variety of viewpoints and perspectives necessary to maintain a free society. A decline in unique rural cultures would result in "the descent toward a less centered, less self-reliant, more homogeneous [national] monoculture."<sup>47</sup>

Jonathan Lash, the head of Vermont's environmental agency "has said that the most important innovations in environmental protection are now occurring at the state level."<sup>48</sup> Applying local solutions to local environmental problems is better for the environment because it relies on remedies that accommodate

the local citizens' way of life, and with which they are culturally familiar. If local solutions are adopted, the people closest to the land are less likely to perceive efforts to protect the environment as being imposed upon them by external forces that threaten their way of life. One of *Enlibra's* stated reasons for local environmental planning is "ensuring broad community support and ownership of the plans."<sup>49</sup>

### **Separation of Decision Makers from Decisions Results in Destructive Policy for the Environment and for Unique Local Cultures**

One of the most difficult challenges in environmental planning in the West, for both field agents and ranchers, is attempting "to implement policy created thousands of miles east by men and women embroiled in Washington politics."<sup>50</sup> In much of the West, federal institutions have replaced local communities in making policy for the West's open spaces.<sup>51</sup> Policymakers for Western public lands are completely immune from removal by the local political process. This "separation of the ruler from the ruled" follows a "colonization" model, rather than a democratic/republican model, imposing solutions on a perceived "'backward' way of life that impedes the march of progress."<sup>52</sup> When the national political process affects the activities of land management agencies, it is heavily influenced by factions and special interest groups remote from the affected communities and their cultures.<sup>53</sup> This principle is illustrated by President Clinton's surprise designation of the Grand Staircase-Escalante National Monument to please environmental constituencies outside Utah.

### **General Comments About *Enlibra***

The focus of this article is the *Enlibra* doctrine's preference for local solutions to local problems. The other principles comprising the *Enlibra* doctrine are: "Collaboration Not Polarization—Use Collaborative Processes to Break Down Barriers and Find Solutions"; "Reward Results, Not Programs—Move to a Performance-Based System"; "Science for Facts, Process for Priorities—Separate Subjective Choices from Objective Data"; "Markets Before Mandates—Replace Command and Control with Economic Incentives Whenever Appropriate"; "Change a Heart, Change a Nation—Environmental Understanding Is Crucial"; "Recognition of Benefits and Costs—Make Sure Environmental Decisions Are Fully Informed"; and "Solutions Transcend Political Boundaries—Use Appropriate Geographic Boundaries for Environmental Problems."<sup>54</sup> Each of these

principles is worthy of discussion in a separate article. There is insufficient space in the present piece to make a meaningful analysis of all of them.

*Enlibra* has at least three important flaws. First, the Policy Resolution adopted by the Western Governor's Association fails to include any direct recognition of the importance of private property rights. Because environmental regulation involves basic issues regarding the control of land and other natural resources, it often implicates the use and enjoyment of private property. As Justice Holmes established, if the regulation of private property "goes too far" it will be recognized as a compensable taking of that property under the Fifth Amendment to the United States Constitution.<sup>55</sup> The defense of private property is a primary purpose for leaving the state of nature to form civil society under English social contract theory.<sup>56</sup> The idea that people can own property necessarily places humans in a superior position to the other creatures and elements in the natural world.<sup>57</sup> In recent years, some theorists of the "deep ecology" movement have argued for "reevaluating our place in nature"

*"The defense of private property is a primary purpose for leaving the state of nature to form civil society under English social contract theory."*

and considering humans as merely an inseparable part of the natural world with no particular superiority to any other element.<sup>58</sup> From this philosophical position, the "deep ecology" movement argues (using different terminology) for a retreat from civil society and a return

to the state of nature—a primal hunting-gathering society.<sup>59</sup> In this brave new world, no one owns anything, therefore, "everyone can take what he or she needs—so there is no need to take more."<sup>60</sup> Although human beings have a moral obligation to exercise wise stewardship over the bounty provided by the natural world, I cannot accept the premise that human beings' superior intelligence, moral reasoning power, and consciousness of self are of no significance in setting them apart from other creatures that act primarily on instinct.

Private property rights have served as a bulwark of individual freedom and basic *human* rights for many centuries.

"[D]isability to hold property" is among the "necessary incidents" of slavery, while the right to "inherit, purchase, lease, sell, and convey property" is among "those fundamental rights which are the essence of civil freedom."<sup>61</sup>

It is important that the *Enlibra* doctrine recognize the importance of wise human stewardship over the natural world. It is equally essential, however, that the effort to exercise this stewardship not be undertaken overzealously at the expense of



cherished constitutional and human rights. As the United States Supreme Court recently stated, the right to private property, protected by the Fifth Amendment, should not be "relegated to the status of a poor relation" to other portions of the Bill of Rights.<sup>62</sup>

The second flaw of the *Enlibra* doctrine is its lack of precision. Many of its principles are written so vaguely that they could be used to justify virtually any policy. Vagueness is a common flaw in documents resulting from the process of political compromise. In order to provide a coherent unifying policy direction, however, *Enlibra* must be refined.

The third flaw of the *Enlibra* doctrine is its lack of conceptual unity. It appears more like a laundry list of generalizations than a coherent body of doctrine organized on the basis of unifying themes. This problem is also common in documents that are produced as the result of political compromise. To have lasting influence in the environmental debate, however, the doctrine must produce some unifying philosophy upon which to build a framework of coherent policy. The only consistent principle running through each element of the Policy Resolution is the desire of the citizens of the West to have greater control over their own destinies while creating a healthy environment, rather than having solutions imposed by external forces. This interpretation can serve as the beginning of an effort to provide greater conceptual unity to the *Enlibra* doctrine, and thus enable its use in consistent policymaking.

## Conclusion

Notwithstanding the aforementioned flaws, *Enlibra* should not be discounted. It represents a serious attempt by the elected governors of the West to articulate a theory for environmental policy formulation that is sensitive to the unique local cultures and circumstances of Western states and communities. These cultures contribute strength, diversity, and perspective to the national culture, and provide identity, moral values, and a sense of belonging and responsibility to their members. Furthermore, efforts to protect the environment are more likely to be successful if they are tailored to local needs, circumstances, and cultures, and have the support of the people closest to the land. To protect these important cultural and ecological values, the states must be vigilant to guard against unintended harm to unique local cultures by institutions which Madison characterized as "too little acquainted with all their local circumstances and lesser interests[.]"<sup>63</sup>

<sup>1</sup>THE FEDERALIST No. 10 (James Madison); Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88(1) COLUM. L. REV. 1, 4 (1988).

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

<sup>3</sup>WESTERN GOVERNORS' ASSOCIATION, Policy Res. 98-001 (1998), <http://www.westgov.org/wga/policy/98001.htm>.

<sup>4</sup>WESTERN GOVERNORS' ASSOCIATION, *Enlibra*, <http://www.westgov.org/Enlibra/>.

<sup>5</sup>C. Davant, *Western Governors Call for New Environmental Policies*, CASPER STAR TRIB. Feb. 24, 1999, at B-1, B-2.

<sup>6</sup>WESTERN GOVERNORS' ASSOCIATION, Policy Res. 98-001(B)(1) (1998), <http://www.westgov.org/wga/policy/98001.htm>; Gov. Michael O. Leavitt, *The Environment: A Down to Earth Approach*, written comments submitted to Western Governors' Association in conjunction with the Plenary Session on the Shared Environmental Doctrine (June 29, 1998). <http://www.westgov.org/wga/initiatives/enviro-w.htm>.

<sup>7</sup>WESTERN GOVERNORS' ASSOCIATION, Policy Res. 98-001(B)(1) (1998), <http://www.westgov.org/wga/policy/98001.htm>.

<sup>8</sup>*Id.*

<sup>9</sup>See note 1, *supra*.

<sup>10</sup>16 U.S.C. § 431.

<sup>11</sup>Proclamation No. 6920, 61 Fed. Reg. 50221 (1996).

<sup>12</sup>143 CONG. REC. H7591 (daily ed. Sept. 18, 1997) (statement of Rep. Hansen).

<sup>13</sup>MONUMENTAL ABUSE: THE CLINTON ADMINISTRATION'S CAMPAIGN OF MISINFORMATION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, H.R. Rep. No. 105-824, 105<sup>th</sup> Cong. 2d Sess. 5, 18 (1998); BEHIND CLOSED DOORS: THE ABUSE OF TRUST AND DISCRETION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, 143 CONG. REC. E2259, E2260, E2268, E2271 (daily ed. Nov. 9, 1997) (Report of the Committee on Resources, Subcommittee on National Parks and Public Lands); 143 CONG. REC. H1283 (daily ed. Cong. Rec. 21, 1997) (statement of Rep. Cannon); 143 CONG. REC. H7590 (daily ed. Sept. 18, 1997) (statement of Rep. Hansen); 143 CONG. REC. H8279 (daily ed. Oct. 1, 1997) (statement of Rep. Solomon); 143 CONG. REC. H8283 (Oct. 1, 1997) (statement of Rep. Young); 143 CONG. REC. H1958 (daily ed. Apr. 29, 1997) (statement of Rep. Duncan); 143 CONG. REC. S3408 (daily ed. Apr. 22, 1997) (statement of Sen. Nickles); Memorandum from Gov. Michael O. Leavitt to his Cabinet 1 (Oct. 11, 1996) (the subject of the memorandum was "Direction on Public Land Issues in Utah").

<sup>14</sup>BEHIND CLOSED DOORS: THE ABUSE OF TRUST AND DISCRETION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, 143 CONG. REC. E2259, E2268, 2270-2271 (daily ed. Nov. 9, 1997) (Report of the Committee on Resources, Subcommittee on National Parks and Public Lands, Attachment 1, Memorandum from Kathleen A. McGinty, Chair of the Council on Environmental Quality ("CEQ") to President Clinton).

<sup>15</sup>BEHIND CLOSED DOORS: THE ABUSE OF TRUST AND DISCRETION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, 143 CONG. REC. E2259, E2260, 2269-2270 (daily ed. Nov. 9, 1997) (Report of the Committee on Resources, Subcommittee on National Parks and Public Lands); 143 CONG. REC. E2259 (daily ed. Nov. 9, 1997) (statement of Rep. Hansen).

<sup>16</sup>143 CONG. REC. H8279 (Oct. 1, 1997) (statement of Rep. Solomon quoting U.S. News & World Report).

<sup>17</sup>143 CONG. REC. H8284 (Oct. 1, 1997) (statement of Rep. Solomon).

<sup>18</sup>BEHIND CLOSED DOORS: THE ABUSE OF TRUST AND DISCRETION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, 143 CONG. REC. E2259, E2265 (daily ed. Nov. 9, 1997) (Report of the Committee on Resources, Subcommittee on National Parks and Public Lands, attached email from Kathleen McGinty, Chair, CEQ, to T.J. Glauthier, et al.).

<sup>19</sup>143 CONG. REC. H8284 (daily ed. Oct. 1, 1997 statement of Rep. Solomon).

<sup>20</sup>BEHIND CLOSED DOORS: THE ABUSE OF TRUST AND DISCRETION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, 143 CONG. REC. E2259, E2270-71 (daily ed. Nov. 9, 1997) (Report of the Committee on Resources, Subcommittee on National Parks and Public Lands, attached Memorandum of Kathleen A. McGinty, Chair, CEQ, to President Clinton).

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

<sup>22</sup>BEHIND CLOSED DOORS: THE ABUSE OF TRUST AND DISCRETION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, 143 CONG. REC. E2259, E2261, E2267

(daily ed. Nov. 9, 1997) (Report of the Committee on Resources, Subcommittee on National Parks and Public Lands); MONUMENTAL ABUSE: THE CLINTON ADMINISTRATION'S CAMPAIGN OF MISINFORMATION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, H.R. Rep. No. 105-824, 105<sup>th</sup> Cong., 2d Sess. 14-15, 18 (1998).

<sup>23</sup>42 U.S.C. § 4332(C).

<sup>24</sup>40 C.F.R. § 1506.2(b) (emphasis supplied); see also 40 C.F.R. § 1506.2(c).

<sup>25</sup>42 U.S.C. § 4331(b)(2), (4) (emphasis supplied).

<sup>26</sup>143 CONG. REC. H1283 (daily ed. Cong. Rec. 21, 1997) (statement of Rep. Cannon).

<sup>27</sup>BEHIND CLOSED DOORS: THE ABUSE OF TRUST AND DISCRETION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, 143 CONG. REC. E2259, E2271 (daily ed. Nov. 9, 1997) (Report of the Committee on Resources, Subcommittee on National Parks and Public Lands).

<sup>28</sup>*Id.* at 2263, 2269; 143 CONG. REC. S3408 (daily ed. Apr. 22, 1997) (statement of Sen. Nickles); 143 CONG. REC. H1283 (daily ed. Cong. Rec. 21, 1997) (statement of Rep. Cannon). This is somewhat ironic in light of Vice-President Gore's earlier charge that "[President] Bush's trip to the Grand Canyon for a 'photo op' in the fall of 1991 inspired cynicism as deep as the Canyon itself." SEN. A. GORE, EARTH IN THE BALANCE: ECOLOGY AND THE HUMAN SPIRIT 174 (1992).

<sup>29</sup>143 CONG. REC. H1283 (daily ed. Cong. Rec. 21, 1997) (statement of Rep. Cannon).

<sup>30</sup>143 CONG. REC. H1959 (daily ed. Apr. 29, 1997) (statement of Rep. Duncan); MONUMENTAL ABUSE: THE CLINTON ADMINISTRATION'S CAMPAIGN OF MISINFORMATION IN THE ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT, H.R. Rep. No. 105-824, 105<sup>th</sup> Cong., 2d Sess. 12-14 (1998).

<sup>31</sup>*Id.*

<sup>32</sup>W. ROSENBAUM, ENVIRONMENTAL POLITICS AND POLICY 263 (1985).

<sup>33</sup>*Id.* at 264.

<sup>34</sup>B. Turque, et. al, *The War for the West*, NEWSWEEK 27 (Sept. 30, 1991).

<sup>35</sup>CATRON COUNTY COMPREHENSIVE LAND PLAN 2-3, adopted in Catron County Ordinance 002-93 (1993).

<sup>36</sup>BUREAU OF LAND MANAGEMENT, U. S. DEP'T OF THE INTERIOR, NEW MEXICO STANDARDS FOR PUBLIC LAND HEALTH AND GUIDELINES FOR LIVESTOCK GRAZING MANAGEMENT 4-31, 4-43, 4-54 (1999) (Draft Statewide Resource Management Plan Amendment/Environmental Impact Statement).

<sup>37</sup>Parsifal Smith-Bucquet, Women on the Range: Seeking Common Ground for Ecological Feminists and Women Who Ranch, Introductory Section (Mar. 11, 1999) (doctoral dissertation in progress at University of Arizona); BUREAU OF LAND MANAGEMENT, U. S. DEP'T OF THE INTERIOR, NEW MEXICO STANDARDS FOR PUBLIC LAND HEALTH AND GUIDELINES FOR LIVESTOCK GRAZING MANAGEMENT 3-59-60, E-25-31 (1999) (Draft Statewide Resource Management Plan Amendment/Environmental Impact Statement).

<sup>38</sup>*Id.*

<sup>39</sup>*Id.*

<sup>40</sup>BUREAU OF LAND MANAGEMENT, U. S. DEP'T OF THE INTERIOR, NEW MEXICO STANDARDS FOR PUBLIC LAND HEALTH AND GUIDELINES FOR LIVESTOCK GRAZING MANAGEMENT 3-59 (1999) (Draft Statewide Resource Management Plan Amendment/Environmental Impact Statement).

<sup>41</sup>Parsifal Smith-Bucquet, Women on the Range: Seeking Common Ground for Ecological Feminists and Women Who Ranch, Introductory Section (March 11, 1999) (doctoral dissertation in progress at University of Arizona); BUREAU OF LAND MANAGEMENT, U. S. DEP'T OF THE INTERIOR, NEW MEXICO STANDARDS FOR PUBLIC LAND HEALTH AND GUIDELINES FOR LIVESTOCK GRAZING MANAGEMENT 3-59-60, E-25-31 (1999) (Draft Statewide Resource Management Plan Amendment/Environmental Impact Statement).

<sup>42</sup>*Id.*

<sup>43</sup>CATRON COUNTY COMPREHENSIVE LAND PLAN 2-18, adopted in Catron County Ordinance 002-93 (1993).

<sup>44</sup>*Id.*

<sup>45</sup>*Id.* at A2-19.

<sup>46</sup>*Id.* at A-2 19-A-2 20.

<sup>47</sup>BUREAU OF LAND MANAGEMENT, U. S. DEP'T OF THE INTERIOR, NEW MEXICO STANDARDS FOR PUBLIC LAND HEALTH AND GUIDELINES FOR LIVESTOCK GRAZING MANAGEMENT 4-31, 4-54 (1999) (Draft Statewide Resource Management Plan Amendment/Environmental Impact Statement).

<sup>48</sup>J. Lester, *A New Federalism: Environmental Policy in the States*, in ENVIRONMENTAL POLICY IN THE 1990s 59 (N. Vig & M. Kraft ed.'s 1990) (citing P. Shabecoff, *The Environment as Local Jurisdiction*, New York Times, January 22, 1989, B9).

<sup>49</sup>WESTERN GOVERNORS' ASSOCIATION, Policy Res. 98-001(B)(1) (1998), <http://www.westgov.org/wga/policy/98001.htm>.

<sup>50</sup>Parsifal Smith-Bucquet, Women on the Range: Seeking Common Ground for Ecological Feminists and Women Who Ranch, Introductory Section (Mar. 11, 1999) (doctoral dissertation in progress at University of Arizona).

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

<sup>53</sup>*Id.*

<sup>54</sup>WESTERN GOVERNORS' ASSOCIATION, Policy Res. 98-001(B)(1) (1998).

<sup>55</sup>*Pennsylvania Coal v. Mahon*, 260 U.S. 393, 415 (1922).

<sup>56</sup>J. LOCKE, TWO TREATISES OF GOVERNMENT 209, 329, 352-353, 359 (P. Laslett student ed. 1988).

<sup>57</sup>*Id.* at 209.

<sup>58</sup>C. MANES, GREEN RAGE: RADICAL ENVIRONMENTALISM AND THE UNMAKING OF CIVILIZATION 146-149 (1990).

<sup>59</sup>*Id.* at 235-41.

<sup>60</sup>*Id.* at 239.

<sup>61</sup>*Civil Rights Cases*, 109 U.S. 3, 22 (1883).

<sup>62</sup>*Dolan v. Tigard*, 512 U.S. \_\_\_, 129 L.Ed 304, 321 (1994).

<sup>63</sup>THE FEDERALIST No. 10 (James Madison); Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88(1) COLUM. L. REV. 1, 4 (1988).

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# *A Guide to Legal Research on the Internet*

by *Marsha Thomas and Suzanne Miner*

In the past, when an attorney said he or she was doing legal research on the Internet, it conjured up images of an exotic, exclusive world where only the truly technologically-adept dared venture. But as more and more information has been placed on the Internet, even the mouse-impaired have started "surfing the Web." Although you can find some very useful and hard to access legal materials on the Web, some things are still not available, and for some legal research you may find the "good old books" still the best.

In this article we want to identify Internet sites that we have found to be the most reliable and useful when doing legal research. Reasons why you would want to use the Web for legal research include:

1. The Web is great to use to find recent court cases at no cost. There are Web sites for United States Supreme Court and Court of Appeals cases (and a few federal district courts), and for many state cases, including Utah. These sites are reliable and the cases become available on these Web sites as quickly, or more quickly, than on the for-fee databases.
2. Some legal materials, such as city or county ordinances, are only accessible through the Web (unless you happen to live right next door to the city's municipal offices). The Seattle Public Library site provides links to many of the ordinances that are available throughout the country. In Utah, the Utah Administrative Code on the Internet is current, while the paper version is almost two years out of date. Other hard to find information that is available on the Web includes federal and state agency documents, and foreign statutes.
3. More and more fee-based legal information is being placed on the Web. This can be helpful because by not subscribing in paper you can save office shelf-space and filing time, and

have keyword searching capability. Fee-based sites are sometimes desirable because the keyword searching is more sophisticated than non-fee based sites. With the advent of using credit cards on the Web, you can retrieve documents from Westlaw using the WestDoc feature, and can search some of the Lexis databases, all without having a subscription to either service.

The Web will not meet all your needs, however. Things to remember:

1. Retrospective coverage for cases on the free Web sites is not extensive. Although the United States Supreme Court cases currently go back to 1893, the Tenth Circuit cases only go back to August 1995.
2. Some Web sites have full-text, keyword searching, but others do not.
3. Searching statutes electronically is still as cumbersome as it has always been. Statutes are one source where we prefer to use the books if they are available.
4. As you look at materials on the Web, always check the date of the materials you are searching. Just because it's on the Web doesn't mean it's current. And remember that what is out-of-date one day may be completely up-to-date the next. Things are always changing.

While our list of legal research sites is comprehensive, it isn't exhaustive and some subject sites listed are only meant to be a sampling of what's out there. If you have any questions about searching on the Web, feel free to contact us for assistance. Happy searching!

*Formerly employed at the S.J. Quinney law library, MARSHA THOMAS is now a sole practitioner with a general practice in Salt Lake City.*



*SUZANNE MINER is the head of information technology at the University of Utah S.J. Quinney law library.*



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### Lexis-Nexis Xchange

<http://lexis.com/xchange> (fee-based)

[LEXIS-NEXIS by Credit Card allows you to retrieve documents available on Lexis for \$9.00/cite.]

## OTHER FEDERAL WEB SITES

### GPO Access Sites

At the Government Printing Office Access sites you will have access to the United States Code, Congressional Bills, Congressional Calendars, Congressional Documents, Congressional Record and Index, Congressional Reports, History of Bills and Resolutions, Federal Register, GAO Reports and Decisions and Public Laws (and more is being added all the time).

<http://www.gpo.ucop.edu>

<http://govinfo.uky.edu/>

<http://mel.lib.mi.us/gpo/>

[http://www.access.gpo.gov/su\\_docs/aces/aaces002.html](http://www.access.gpo.gov/su_docs/aces/aaces002.html)

<http://gpo.lib.purdue.edu/>

<http://sailor.lib.md.us/forms/gpo.html>

### Recent Federal Court App'ts

<http://www.courts.com/appoint.htm>

### White House

<http://www.whitehouse.gov>

### Oral Argument Archive

<http://oyez.nwu.edu/>

## UTAH LEGAL INFORMATION

### CASES

#### Utah Supreme Court and Court of Appeals

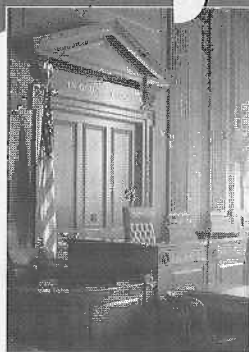
<http://courtlink.utcourts.gov/>

[Utah Courts home page has Utah Supreme Court and Court of Appeals decisions from 1996/1997-current.]

<http://www.versuslaw.com> (fee-based service)

[Utah court opinions from 1950-present. Key word searchable.]

# OBJECTION!



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<http://www.code-co.com> (fee-based service)

[Access to Utah Code, Utah Administrative Code and appellate court opinions (cases back to 6/1/92), plus other government information. Key word searchable.]

#### **Utah Courts Xchange (fee-based service)**

<http://courtlink.utcourts.gov/xchange/index.htm>

Information on individuals, civil case pending reports, tax lien reports. \$30/month for non-governmental users (+ \$25 registration fee); No charge for state entities.

#### **STATUTES & CONSTITUTION**

<http://www.le.state.ut.us/>

[Full text of Utah Code. Key word searchable.]

<http://www.code-co.com> (fee-based service)

[Full text of Utah Code. Key word searchable.]

#### **Bills**

<http://www.le.state.ut.us/>

[Text and status of Utah bills.]

#### **REGULATIONS**

<http://www.rules.state.ut.us>

[Includes proposed regulations.]

<http://www.code-co.com> (fee-based service)

[Key word searchable. Includes 1995-1998 archived editions.]

#### **Agencies**

<http://www.state.ut.us/html/agencies.htm>

[List of Utah state agencies—some have active Web sites and some do not.]

#### **CITY AND COUNTY CODES**

<http://www.spl.org/govpubs/municode.html>

[Selected codes from various states. Easy to use but not comprehensive - needs to be updated. If the city or county you are looking for isn't listed, try the sites below.]

<http://www.piperinfo.com/state/states.html>

[Contains links to state & city information, must then check city site to see if code is listed.]

<http://www.municode.com/database.html>

#### **NEWSPAPERS**

Deseret News

<http://www.desnews.com>

Salt Lake Tribune

<http://www.sltrib.com>

Other Utah Newspapers

<http://www.newsdirectory.com/news/press/na/us/ut/>

#### **UNIVERSITIES**

##### **University of Utah**

Main Campus

<http://www.utah.edu>

College of Law

<http://www.law.utah.edu>

S.J. Quinney Law Library Web Page & Catalog

<http://lawlib.law.utah.edu>

##### **Brigham Young University**

Main Campus

<http://www.byu.edu>

College of Law

<http://www.law.byu.edu>

BYU Howard W. Hunter Law Library & Catalog

[http://www.law.byu.edu/Law\\_Library/](http://www.law.byu.edu/Law_Library/)

##### **Other Utah University Libraries**

<http://www.lib.utah.edu/utahlinks/index.html>

#### **PUBLIC LIBRARIES**

##### **Salt Lake County Public Libraries**

<http://www.slco.lib.ut.us>

##### **Salt Lake City Public Libraries**

<http://www.slcppl.lib.ut.us>

##### **Other Utah Public Libraries**

<http://pioneer.lib.ut.us/>

#### **ALL STATES LEGAL INFORMATION**

##### **WashLaw**

<http://www.washlaw.edu>

##### **Cornell**

<http://www.law.cornell.edu/states/listing.html>

[Both Washlaw and Cornell include comprehensive links to state information for all fifty states.]

##### **State Statutes by Topic**

[http://www.law.cornell.edu:80/topics/state\\_statutes.html](http://www.law.cornell.edu:80/topics/state_statutes.html)

##### **State and Local Government Pages**

<http://www.piperinfo.com/state/states.html>

##### **Administrative Codes and Registers**

<http://www.nass.org/acr/acrdir.htm>

[Links to administrative codes and registers. All fifty states are listed, though not every state has their Codes and Registers on the Web.]



## **VersusLaw**

<http://www.versuslaw.com> (fee-based service)

[Appellate court cases from all 50 states, many back to 1930. \$6.95 per month per person.] Case on Demand (C.O.D.) To receive an opinion by e-mail is \$7.00 - same-day delivery. For an opinion by fax, it's \$12.50 - same-day delivery

## **LOIS**

<http://www.loislaw.com> (fee-based service)

[Cases, statutes, regulations, attorney general opinions for over 20 states with more states being added regularly. They estimate that they will have all states added by the end of 1999.]

## **State Court Records**

See Courtlink and CourtExpress entries under Federal Legal Information.

## **Brief Reporter**

<http://www.briefreporter.com> (fee-based)

Allows you to search briefs. Full-text searchable.

## **City and County Codes**

See entry under Utah Legal Information.

# **SECONDARY SOURCES**

## **JOURNAL ARTICLES**

### **Electronic Journals**

<http://www.legalethics.com/pa/legrefer/journals.htm>

### **Legal and Law Related Journals**

<http://www.usc.edu/dept/law-lib/legal/journals.html>

<http://www.lawreview.org>

<http://www.lawsources.com/also/usa.cgi?usj>

### **Tables of Contents of More Than 750 Law Reviews**

[http://tarlton.law.utexas.edu/tallons/content\\_search.html](http://tarlton.law.utexas.edu/tallons/content_search.html)

## **Infotrieve**

<http://www.infotrieve.com/> (fee-based)

[Document delivery service]

You can also use **Westdoc** (<http://www.westdoc.com>, \$10 per document) and **Lexis-Nexis Xchange** (<http://lexis.com/xchange>, \$9.00 per document), to retrieve any journal articles that are available on Westlaw or Lexis.

## **LEGAL NEWSLETTERS AND INFORMATION**

**Law Library Resource Exchange** <http://www.llrx.com>

## **Virtual Chase**

<http://www.virtualchase.com/index.shtml>

## **The Internet Lawyer**

<http://www.internetlawyer.com>

## **Law Practice Management**

<http://www.abanet.org/lpm/magazine/lpmcontents.html>

## **nothing.but.net**

<http://www.abanet.org/lpm/magazine/nbn>

## **U.S. Law Week (fee-based)**

<http://www.bna.com>

## **NEWSPAPERS**

### **TotalNEWS**

<http://www.totalnews.com>

### **PointCast**

<http://www.pointcast.com/whatis.html>

[Clipping service for news.]

### **National Law Journal**

<http://www.ljx.com/nlj>

## **Dow Jones Business Information Services**

<http://bis.dowjones.com/> (fee-based)

[Business information such as the Wall Street Journal, Electronic Clipping Service to track industry trends—see sites for individual subscription prices.]

## **ELECTRONIC BOOKS**

### **Matthew Bender Treatises—Authority on Demand**

<http://www.bender.com>

[Select Authority on Demand at top of screen. Can subscribe by title—gives unlimited access for duration of subscription.]

### **BNA Tax Management Portfolios**

<http://subscript.bna.com/newsstand> (fee-based)

### **CCH Internet Tax Network**

<http://tax.cch.com> (fee-based)

[Includes Standard Federal Tax Reporter.]

### **RIA Tax Services**

<http://checkpoint.riag.com/> (fee-based)

[Includes Federal Tax Coordinator 2d.]

## **LAW-RELATED DISCUSSION GROUPS**

### **Law Lists**

<http://www.lib.uchicago.edu/cgi-bin/law-lists>

[Compilation of law-related electronic discussion lists and Usenet newsgroups. Lists arranged alphabetically and is key word searchable.]

### **To search newsgroups**

<http://www.dejanews.com>

### ***LEXIS and WESTLAW via the WEB***

Lexis.com  
<http://lexis.com>  
  
Westlaw.com  
<http://westlaw.com>

## **REFERENCE AIDS**

### ***LAW ENCYCLOPEDIAS***

<http://www.lectlaw.com/ref.html>  
<http://www.nolo.com/briefs.html>

### ***LEGAL DICTIONARIES***

<http://www.lectlaw.com/def.htm>  
<http://www.nolo.com/dictionary/wordindex.cfm>  
<http://www.wwlia.org/diction.htm>

### ***DICTIONARY AND THESAURUS***

<http://www.dictionary.com>  
<http://www.m-w.com/netdict.htm>

### ***LIBRARY CATALOGS***

<http://www.lights.com/hytnet/>

### ***FORMS***

<http://www.findlaw.com/16forms/index.htm>  
<http://www.lectlaw.com/form.html>  
<http://www.washlaw.edu/legalforms/legalforms.html>  
<http://www.ilrg.com/forms/index.html>  
<http://www.uslegalforms.com> (fee-based)  
<http://www.CounselQuest.com/forms.htm>  
[These sites provide access to a variety of legal and business forms.]

### ***BIBLIOGRAPHIC FORMATS FOR CITING ELECTRONIC INFORMATION***

<http://www.lib.umich.edu/libhome/Documents.center/cite.html>  
<http://www.peru.edu/libresources/style.html>

### ***CITING LEGAL INFORMATION—BLUEBOOK INFORMATION***

<http://www.law.cornell.edu/citation/citation.table.html>

### ***MAPS***

<http://mapquest.com>  
<http://www.mapblast.com/>

### ***STATISTICS***

**STAT-USA** (fee-based)  
<http://www.stat-usa.gov/>  
[Department of Commerce's business and economic statistics - very comprehensive.]

### **Fedstats**

<http://www.fedstats.gov/>

### **Statistical Resources on the Web**

<http://www.lib.umich.edu/libhome/Documents.center/stats.html>  
[Index of Web sites for statistical information. Listed by topic]

## **DIRECTORIES**

### ***ATTORNEYS AND LAW FIRMS***

#### **Martindale-Hubbell Law Directory**

<http://www.martindale.com/>

#### **West's Legal Directory**

<http://lawoffice.com>

### ***BAR ASSOCIATIONS***

#### **Utah State Bar**

<http://www.utahbar.org>  
[click on Find a Lawyer button for membership information.]

#### **American Bar Association**

<http://www.abanet.org>

#### **Other State Bars**

<http://www.hg.org/bar.html>  
<http://www.abanet.org/lawlink/associations.html>

### ***STATE AND FEDERAL COURTS DIRECTORY***

<http://www.courts.com> (fee-based)

### ***EXPERT WITNESSES***

#### **Listing of various pages**

<http://www.nocall.org/experts.htm>

#### **National Directory of Expert Witnesses**

<http://www.claims.com>

#### **Technical Advisory Service for Attorneys (TASA)**

<http://www.tasanet.com>

#### **ExpertPages**

<http://www.expertpages.com>

#### **ExpertLaw**

<http://www.expertlaw.com>

#### **Expert Witness Network**

<http://www.witness.net> (fee-based)  
Connects attorneys with experts in various fields. \$25 pay-per-use or \$99/yr unlimited access.

#### **National Expert Transcript Service (NETS)**

<http://netscripts.com/index.htm> (fee-based)  
Can get transcripts of Expert Witness testimony. Submit a



request for transcripts and they will call you with pricing information. The NETS catalog is also on Westlaw.

#### **NATIONAL TELEPHONE AND INTERNET DIRECTORIES**

##### **National White Pages**

<http://uswestdex.com>  
<http://www.switchboard.com>  
<http://www.anywho.com>  
<http://www.infospace.com>  
[Includes reverse lookup.]

##### **National Yellow Pages**

<http://www.yp.uswest.com>

##### **Worldwide Phone Directories**

<http://www.teldir.com>

##### **Area Codes**

<http://www.555-1212.com/>

##### **Zip Codes**

<http://www.usps.gov>

#### **LAW SCHOOL WEB PAGES**

<http://www.lawsch.uga.edu/legalwww/lschoola.html>

#### **LAW PROFESSORS ON THE WEB**

<http://jurist.law.pitt.edu/>

#### **LEGAL PUBLISHERS**

##### **AcqWeb**

<http://www.library.vanderbilt.edu/law/acqs/acqs.html>  
[Lists Internet sites for publishers and information vendors.]

##### **Bureau of National Affairs**

<http://www.bna.com>

##### **Code-Co**

<http://www.code-co.com/>

##### **John Wiley & Sons**

<http://www.wiley.com>

##### **Matthew Bender**

<http://www.bender.com>

##### **Lexis Publishing**

<http://www.lexispublishing.com>

##### **Oceana Publications, Inc.**

<http://www.oceanalaw.com>

##### **Shepards McGraw-Hill**

<http://shepards.com>

##### **Warren Gorham & Lamont**

<http://www.wgl.com>

##### **West Publishing Company**

<http://www.westgroup.com>

#### **SITES THAT INDEX LEGAL INFORMATION**

##### **Washlaw**

<http://www.washlaw.edu>

##### **Cornell**

<http://www.law.cornell.edu/topical.html>

##### **FindLaw**

<http://www.findlaw.com/index.html>

##### **GLIN/Library of Congress**

<http://lcweb2.loc.gov/glin/worldlaw.html>

##### **Indiana**

<http://polecat.law.indiana.edu/law/v-lib/lawindex.html>

##### **Emory**

<http://www.law.emory.edu/LAW/refdesk/toc.html>

##### **Villanova**

<http://www.law.vill.edu>

##### **CataLaw**

<http://www.CataLaw.com>

##### **Practicing Attorneys Home Page**

<http://www.legalethics.com/pa/main.html>

##### **Hieros Gamos**

<http://www.hg.org>

##### **ABA LawLink**

<http://www.abanet.org/lawlink/home.html>

##### **Court TV**

<http://www.courtTV.com>

#### **CONTINUING LEGAL EDUCATION**

<http://www.ali-aba.org/>

<http://www.findlaw.com/07cle/>

<http://www.legalseminars.com>

#### **COMPANY AND BUSINESS INFORMATION**

##### **PUBLIC COMPANY INFORMATION**

##### **Wall Street Research Net**

<http://www.wsrn.com/>

##### **Hoover's**

<http://www.hoovers.com>

**Company Sleuth**

<http://www.companysleuth.com>

**CorpTech**

<http://www.corptech.com>

**Wright Research Center**

<http://profiles.wisi.com>

**ANNUAL REPORTS**

<http://www.prars.com>

<http://www.streetlink.com/>

**NONPROFIT ORGANIZATIONS**

<http://www.nonprofits.org/>

<http://www.guidestar.org>

**EXCHANGE RATES**

<http://www.oanda.com>

Exchange rates for 164 countries on any day back to 1990.]

**STOCK QUOTES**

<http://quote.yahoo.com>

<http://www.quote.com>

[Provides pricing for securities, including stocks, bonds, options, commodity futures and mutual funds. Fee-based.]

<http://www.stockmaster.com>

[Provides current and historical stock quotes.]

**PRODUCT RECALLS**

<http://www.notice.com/>

[Recalls of consumer and office products, automobiles, etc.]

**DOW JONES BUSINESS INFORMATION SERVICES**

<http://bis.dowjones.com>

[Fee-based service. Can access Wall Street Journal, clipping services, continually updated business news.]

**THOMAS REGISTER OF AMERICAN MANUFACTURERS**

<http://www.thomasregister.com/index.html>

**DOCUMENT SPECIFICATIONS & STANDARDS**

<http://www.doccenter.com>

[Fee-based service.]

**SUBJECT SITES****MULTI-SUBJECT**

<http://www.law.indiana.edu/law/v-lib/lawindex.html>

<http://www.findlaw.com/01topics/index.html>

<http://www.njlawnet.com/general.html>

<http://www.nocall.org/collection.htm>

**BANKING****Money Page**

<http://www.moneypage.com>

**Banking.com**

<http://www.banking.com>

**Qualisteam**

<http://www.qualisteam.com/eng/conf.shtml>

[listing of banking sites on the web]

**ENVIRONMENTAL****E.P.A.**

<http://www.epa.gov>

**EnviroLink**

<http://www.envirolink.org/>

**FOREIGN AND INTERNATIONAL LAW**

<http://www.law.emory.edu/LAW/refdesk/country/foreign>

<http://www.washlaw.edu/forint/>

<http://law.house.gov/52.htm>

**United Nations**

<http://www.un.org>

**IMMIGRATION****Immigration and Naturalization Center**

<http://www.ins.usdoj.gov/>

**Immigration Lawyers on the Web**

<http://www.ilw.com>

**Misc. Immigration Information**

<http://www.visalaw.com>

**Immigration Lawyers Central**

<http://www.immlawyers.com>

**INTELLECTUAL PROPERTY****United States Patent Office**

<http://www.uspto.gov/>

**Official Gazette**

<http://www.uspto.gov/web/offices/com/sol/og/og.htm>

**Law Journal Extra**

<http://www.ljextra.com/practice/intellectualproperty/index.html>

**Hieros Gamos**

<http://www.hg.org/intell.html>

**Franklin Pierce Basic IP Information**

<http://www.fplc.edu/TFIELD/PLFIP.htm>



**Trademarks-How to Research**

<http://www.info-law.com/tmsearch.html>

**United States Copyright Office**

<http://lcweb.loc.gov/copyright/>

**University of Texas Copyright Crash Course**

<http://www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm>

**LABOR & EMPLOYMENT****American Lawyer**

<http://www.lawnewsnetwork.com/practice/employmentlaw/>

**LIMITED LIABILITY COMPANIES**

<http://www.llc-usa.com/html/resources.html>

**MEDICAL****PubMed**

<http://www.nlm.nih.gov>

[comprehensive index of medical journal articles]

**Medical Matrix**

<http://www.medmatrix.org/>

**Medscape**

<http://www.medscape.com/>

full-text articles]

**Merk Manual**

[http://www.merck.com/pubs/mmanual\\_home/](http://www.merck.com/pubs/mmanual_home/)

[Home edition and not all sections are available. Keyword searchable.]

**PROPERTY ASSESSMENTS**

<http://www.people.Virginia.edu/~dev-pros/Realestate.html>

**PUBLIC RECORDS ON THE WEB**

<http://www.knowx.com/> (fee-based)

Obtain information on liens, corporate records, professional licenses, real property, etc.

Prices vary depending on document obtained.

**SECURITIES****SEC and EDGAR Home Page**

<http://www.sec.gov>

**Stock Quotes**

<http://www.quote.com>

**NASD**

<http://www.nasdr.com>

**1933 and 1934 Acts, Rules and Forms**

<http://www.law.uc.edu/CCL/sldtoc.html>

**University of Maryland Blue Sky Page**

<http://www.law.ab.umd.edu/marshall/bluesky>

**TAXATION****I.R.S. Publications / Forms**

<http://www.irs.ustreas.gov/>

**Forms**

<http://www.1040.com>

**Tax Analysts**

<http://www.tax.org/TaxWire/taxwire.htm>

**E&Y Tax Alerts**

<http://www.taxcast.com/f-taxnews.htm>

**TREATIES****United States Treaties Researcher**

<http://www.oceanalaw.com> (fee-based)

[Includes U.S. Treaties & International Agreements, 1783-present]

**VERDICTS****MoreLaw**

<http://www.morelaw.com>

**Judicial Statistical Inquiry Site**

<http://teddy.law.cornell.edu:8090/questata.htm>

**State Jury Verdict Publishers**

<http://www.juryverdicts.com>

**USEFUL LAW-RELATED BOOKS ON THE INTERNET**

G. BURGESS ALLISON, *TGE LAWYER'S QUICK GUIDE TO NETSCAPE NAVIGATOR*, ABA Law Practice Management Section (1997).

JOSH BLACKMAN, *TGE INTERNET FACT FINDER FOR LAWYERS*, ABA (1998).

JAMES EVANS, *LAW ON THE NET* (2nd ed.) (1997).

ERIK J. HEELS, *LAW LAW LAW ON THE INTERNET: THE BEST LEGAL WEB SITES AND MORE*, ABA Law Practice Management Section (1998).

THE LAWYERS RESEARCH COMPANION: *A CONCISE GUIDE TO SOURCES* (1998).

JERRY LAWSON, *TGE COMPLETE INTERNET HANDBOOK FOR LAWYERS*, ABA Law Practice Management Section, (1999).

DON MACLOED, *THE INTERNET GUIDE FOR THE LEGAL RESEARCHER* (1997).

For a more comprehensive list of law-related Internet books, newsletters, and videotapes, see

<http://www.abanet.org/lpm/magazine/booklist.html>.

## SEARCHING TIPS FOR THE INTERNET

People generally complain that they either find too much information on the Internet or not enough. The way we approach searching is as follows:

First, if you know an address, enter it. Use this list as a starting point, and continue obtaining good reference books that categorize legal sites for you.

Second, if you don't know an address, see if someone has indexed the information for you. Use an index listed above such as <http://www.washlaw.edu> or <http://www.findlaw.com>.

If we can't find it either by entering an address we know or using an index, then we search the Internet. To use a search engine, either click on the "net search" button of your browser, or enter the address of your favorite search engine.

Search engines vary in the results they produce because of the way they are set up. Generally, search engines have Web crawlers that go out and crawl about indexing Web sites. The differences in results are produced because some of the engines crawl around more often, some only index certain key words, while others index the entire site. Some search engines return results in categories, while other engines return individual Web pages. Most search engines are free because they make money by hosting advertising at their site.

Some of the more popular engines are:

Altavista	<a href="http://altavista.com">http://altavista.com</a>
Excite	<a href="http://www.excite.com">http://www.excite.com</a>
Go to	<a href="http://goto.com">http://goto.com</a>
Hotbot	<a href="http://www.hotbot.com">http://www.hotbot.com</a>
Infoseek	<a href="http://infoseek.go.com">http://infoseek.go.com</a>
Lycos	<a href="http://www.lycos.com">http://www.lycos.com</a>
Magellan	<a href="http://magellan.excite.com">http://magellan.excite.com</a>
Yahoo	<a href="http://www.yahoo.com">http://www.yahoo.com</a>

Some search engines combine results from other search engines (see <http://www.go2net.com> or <http://www.lawcrawler.com>). Once you find your favorite search engine, use the help buttons to give you options on searching methods and commands.

There are a couple of sites that use templates for searching legal information. One is Meta-Index for U.S. Legal Research at <http://gsulaw.gsu.edu/metaindex/>, and the other is Law Guru <http://www.lawguru.com>. Once you become familiar with the search engine of your choice, however, you'll probably find that you like to control your own searching parameters.

## SEARCH ENGINE HELPS

Many of the search engines use the same searching commands now. Try the following commands to help narrow your results.

### Simpler Searching

- Use quotations around phrases.
- Lower case indicates a case insensitive query. Any capital letters in a search will force an exact case match (as will accents).

+ a plus sign immediately before a word means find the word for sure (i.e. +report).

- a minus sign or the (and not) before a word means exclude this word.

\* truncation (use after at least three letters).

- Field searching  
title:"the wall street journal"  
url:put word here (use this if you want a particular word in the url).

### More Advanced Searching

- For connectors you can use the following:  
and (use & or the word and)  
or (use the word or)  
near (use ~ or the word near - searches for words within 10 words of each other but is only available in some search engines).
- Use parentheses to better define your search if you are using the connectors and or in the same search.  
Example: "double jeopardy" and (automobile or vehicle)  
If there were no parentheses, it would look for the and first (try to find "double jeopardy" and automobile) or the word vehicle.

## PRINTING AND DOWNLOADING INFORMATION OFF THE WEB

### PRINTING

If you just want what you are seeing on the screen, use the File pull-down menu, then you will find the Print key. If you do this, your results should mirror the page you are viewing. Be aware that if the page has too many graphics, your printer may not be big enough to handle them. (If this happens, see if the page has a text only version, and print that instead).

### DOWNLOADING/SAVING

The easiest way to save the information you are viewing is to cut and paste text between your browser and a word processor. When you see the text that interests you in your browser, highlight the text, then go up to the Edit menu on the toolbar, then



click on copy (or press control-c). Open your word processor, then go under Edit again and click on paste (or press control-v).

Trying to save what you see on the screen usually doesn't work. You can try to do this by going to the File menu and choosing save as, then designating the drive you want the file to be on. Where it says save file as type, choose text. Be warned though, even if you do this, you may get the source code (the html file) that has a bunch of extra characters in it.

Sometimes a site will have a download hypertext link. If you click on this, it will usually download the file without displaying the file for you to view. You just need to remember which drive/file you specified for the download. You will see this option for bigger documents (such as legislative bills).

## **DOWNLOADING SPECIAL FORMATS**

### **PDF FILES**

When you see a .PDF extension or file, these are files that are meant to be opened and viewed with a special viewer called Adobe Acrobat reader. This is a viewer that will allow uniform viewing of a formatted document called a .pdf file no matter which type of machine you are on (mac, pc, mainframe). This is usually a separate application and can be downloaded off the Internet for free at <http://www.adobe.com/prodindex/acrobat/readstep.html>.

If you are using Netscape, you can either

- configure Netscape to automatically open Adobe Acrobat reader (by telling Netscape the path (or where) Adobe Acrobat is located on your machine) by finding the Preferences option (could be under Edit, then Preferences, then Navigator Applications (look for the description Portable Document Format), or in an older version of Netscape look under Options, then General Preferences, then the Helpers tab). Once you are there (whew!) you will need to enter the path where Adobe Acrobat is located on your machine

OR

- you can save the file first, then use the adobe acrobat reader as a separate application (as explained in the following instructions).

Using Adobe Acrobat Reader as a separate application.

1. Locate the .pdf hypertext mark (will usually just say .pdf).
2. Click on the .pdf hypertext mark.
3. It should bring up a little window explaining that you can configure an external viewer, or save. Click on save.
4. Save this file to whatever drive you want, usually a name will

be assigned already to the file. (Just remember where you saved it.)

5. Go outside your browser and open your adobe acrobat application.
6. Open the file you just saved.
7. Send the file to the printer.

### **RTF FILES**

RTF stands for Rich Text Format. When you encounter one of these documents (we see fewer and fewer of these as time goes by), just click on the RTF file, and it will give you an option to save. Save it, then go outside your browser, and open it with your regular word processor. The quality of the file you see depends on how compatible your word processor is with the RTF file.

### **ZIPPED FILES**

Some files are "zipped" or compressed so they take up less space on the Internet. To unzip them, you need a utility that will unzip the document. When you unzip a file it will uncompress the file, and make it viewable in normal format. You can download a dos utility called pkzip (to zip files) and pkunzip (to unzip files) from the Internet by going to <http://www.shareware.com> and searching for dos versions of either pkzip.exe or pkunzip.exe, or you can search for windows versions of zip or unzip. There is also a site on the Internet at <http://www.winzip.com> where you can order/download winzip, an unzipper designed specifically for windows (current price is \$29).

## **CUSTOMIZING YOUR HOME PAGE**

The home page that will appear when you open your browser can be customized to show a list of your favorite links. To do this requires writing a simple home page in HTML. The steps to follow are listed below:

1. Open a word processing program (don't use WP 8.0 or Word-use Notepad or WordPad instead).
2. Type in the template below.
3. Substitute your favorite sites and descriptions for the ones listed.
4. When you save your document, save it as a text file with an ".htm" extension. So your document name may be something like home.htm. Close the document.
5. Open your browser, go under File, then choose "open file in browser" or "open."
6. Open your document.
7. Copy down the document path name that shows up on your netsite field. In Netscape, find the Preferences options (could be under Options, then General Preferences, then Appearance, then Startup then Home page location field or it

may be under Edit, Preferences, then Navigator Home page). If you are in Explorer, go to View, Options, Navigation, then Customize address, and Start Page. Type in the document path name into that field. Now whenever you start your browser, your own home page will appear.

```
<HTML>
<HEAD>
<TITLE>FIRM NAME WEB PAGE</TITLE>
</HEAD>
<BODY>
<CENTER><H2>YOUR FIRM NAME HERE</H2></CENTER>
<CENTER><H3>Your firm address here</H3></CENTER>
<CENTER><H4>More info about you if you want
it</H4></CENTER>
<HR>
<P>
Here you will find:
<UL>
<LI>A link to <A HREF="http://courmlink.utcourts.gov"> Utah
Cases.</A>
<LI>Send me to the <A
HREF="http://www.washlaw.edu/ca10/"> Tenth Circuit.</A>
<LI>How about the <A
```

HREF="http://supct.law.cornell.edu/supct/">cases</A> from the U.S. Supreme Court.

```
<P>
<LI>Now Some links to <A HREF="http://thomas.loc.gov">
Federal Bills.</A>
<LI>And a link to the <A HREF="http://www.le.state.ut.us">
State Bills.</A>
<P>
<LI>Go to my favorite <A HREF="http://www.washlaw.edu">
index</A> of legal materials.
<LI>Access the University of Utah <A
HREF="http://lawlib.law.utah.edu/?">card catalog.</A>
</UL>
<HR>
<B>To access any of the above, just click on the underlined
word.</B>
<HR>
<P>
<EM>last updated October 7, 1999.</EM><BR>
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<A HREF="mailto:thomas@aros.net">thomas@aros.net</A>.
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# *Investment Strategy for the Bypass Portion of a Family Trust—Should the Trust Instrument Nullify Utah Code Section 22-3-13?*

by Timothy B. Lewis

**I**n allocating income between an income beneficiary and the remaindermen, unless the trust instrument provides otherwise, the Utah Principle and Income Act (UPIA) will rule the case. See UTAH CODE ANN. § 22-3-3. Normally under the UPIA, capital gains are allocated to principle or corpus rather than to income. See UTAH CODE ANN. § 22-3-4(2)(a)). Hence, such gains will not be distributed as income to the income beneficiary.

But under Utah Code section 22-3-13, any property that does not produce income (such as rents or interest, and the like, other than capital gains) of at least one percent for more than one year, is considered “under-productive property.” In such a case, the trustee is required to treat a certain portion of the sales proceeds received upon the disposition of such property as accounting income distributable to the income beneficiary. The formula used to make this allocation is complicated. But for this section, all sales proceeds would be considered principle held for the ultimate benefit of the remaindermen. See UTAH CODE ANN. § 22-3-4(2)(a)).

This article will explore the advisability of nullifying the effect of the section concerning “under-productive property” in the case of the “bypass portion” of a standard revocable family trust.

To illustrate, assume that each spouse is deemed to own one-half (\$625,000) of the combined estate of \$1,250,000. Everything is put into a revocable living trust providing that upon the first death, the trust corpus will divide into two halves with the decedent's half being called Part A and the surviving spouse's half being called Part B. Part A will become irrevocable, while Part B will remain revocable for the rest of the surviving spouse's life.

Assume further, that the trust instrument provides that principal and income will be determined under the UPIA (Utah Code, title 22, chapter 3), but specifically nullifies the application of section 22-3-13 pursuant to section 22-3-3(1)(a).

Part A will become the “bypass portion” and the basic estate planning strategy will be to use the decedent's unified credit to protect it through both deaths. For the sake of giving the surviving spouse (we will assume this is the wife) maximum security,

the trust instrument gives her the right to (1) all income generated from Part A, (2) a “5/5 power” regarding invasion of corpus in Part A, and (3) the further right to invade Part A's corpus for her health, education, support, or maintenance needs. The portion of Part A remaining at the wife's death will pass to the children by right of representation.

The standard caution is given to the wife to avoid using her corpus invasion powers described above unless and until she really needs them because Part A has been fully protected against estate taxes by the husband's unified credit. Instead, she should manage the assets in Part B to make sure they are under the amount that can be protected by the unified credit allowable with regard to her estate at the time of her death.

With this basic estate planning strategy in mind, let us consider two possibilities for investments regarding Part A of the trust. In the first scenario, we will assume it is invested in corporate bonds that throw off taxable interest income. In the second scenario, we will assume it is invested in growth stocks that do not throw off any dividend income. We will assume that both types of investments produce annual rates of return of ten percent—in the first case, through interest income and in the second, through capital gains appreciation.

We will also assume that were it not for any income generated by Part A that would flow to the wife, she would consume exactly the amount of resources from Part B necessary to have Part B equal the amount protectable at her death by her unified credit. We will further assume that she will live for five years after her husband's death.

## **1st Scenario:**

Since under the UPIA, all interest income generated by Part A would be part of the trust's accounting income, such income

*TIMOTHY B. LEWIS, J.D. is an associate professor of Business at Southern Utah University.*

would all be payable to the wife (or to Part B of the trust, which for all intents and purposes, is the same thing). Thus, her estate would grow by \$62,500 per year less the personal income taxes she would have to pay on this income. If we assume a top rate of 39.6%, this would cause a net increase in her gross estate of \$37,750 per year.

To simplify things, let us make the unlikely assumption that these annual additions are not reinvested in any productive manner so that the net increase to her gross estate over five years from this income generated from Part A would amount to \$188,750 ( $\$37,750 \times 5$ ).

Since this would upset the equilibrium we assumed earlier (i.e. that but for these additions, her taxable estate would exactly equal the amount protectable by her unified credit), every dollar of this amount will be subject to estate taxes at a rate at least equal to thirty-seven percent. Thus, her estate would incur estate taxes of at least \$69,838. Consequently, the next generation would actually receive \$118,912 ( $\$188,750 - \$69,838$ ) as a result of these five years of investment activities in Part A of the trust.

## 2nd Scenario:

Since capital gains are allocated to principal under the UPIA, none of the capital gains will factor into the determination of accounting income. Thus, there will be no "income" (resulting from the earnings activities of Part A of the trust) to be distributed to either the wife or to Part B of the trust. Thus, such capital gains will be taxed on the fiduciary return and remain in Part A of the trust. In order to compare the two scenarios, we will assume that all such annual gains are recognized so that income taxes are paid along the way, as they would have to be in the first scenario.

Assuming a maximum capital gains rate of twenty percent, the principal of Part A will grow by \$50,000 ( $\$62,500 \times (1 - .2)$ ) per year or by \$250,000 over the course of five years ( $\$50,000 \times 5$ ). Again, for the sake of simplifying the comparisons, we will make the unlikely assumption that these annual gains will just be put into a non-interest bearing cash account and are not reinvested in any productive fashion.

Because there will be no estate taxes on Part A at the wife's death, everything in this part will pass estate tax free to the heirs.

Obviously, the second scenario is financially superior to the first. Because of the lower effective capital gains rate, less income taxes would be paid under the second scenario, allowing more value to pass to the heirs. In addition, the passage of property to the heirs would totally avoid the \$69,838 of transfer

taxes associated with the first scenario. In all, the heirs would be at least \$131,088 ( $\$250,000 - \$118,912$ ) better off financially under the second scenario than under the first.

It is interesting to note that even if we kept the capital appreciation rate at ten percent in the second scenario and increased the interest rate to twenty percent in the first scenario, the net after tax (income and estate) value going to the heirs under the first scenario would only be \$237,825<sup>1</sup> which would still be less than the \$250,000 figure applicable to the capital gains scenario.

The differential between the two scenarios would only be enlarged if we made the very reasonable assumption that all net annual earnings would be reinvested productively.

So what does Utah Code section 22-3-13 have to do with all of this? Answer: if this section is not nullified by the trust instrument, then the results of the second scenario would not be so favorable because the trustee would have to treat part of the capital gains income generated by Part A as "delayed income" and allocate it to accounting income, effectively forcing some of the earnings out of Part A and over to the wife or to Part B of the trust, which is hers. This delayed income would be calculated as follows:

1. Increase the "inventory value" of the assets generating those capital gains by a five percent annual simple interest rate over the life of the investment. Presumably the "inventory value" would be the \$625,000 amount in Part A.
2. Subtract the foregoing number from the net proceeds of the sale of the underperforming asset (i.e. one that did not at least produce an average accounting income return of one percent each year).
3. Add to this difference any carrying charges and expenses previously charged against income while the property was underproductive.
4. Subtract from this number (a) any income received by the income beneficiary from the property and (b) the value of any beneficial use of the property by the income beneficiary.

Because the foregoing results in accounting income, it will be allocated to Part B of the trust and taxed there. Even if taxed, for income tax purposes, at the same twenty percent capital gains rate, that income (net of its associated income taxes) will be subject to estate tax at a rate of at least thirty-seven percent. Whatever portion of the sales proceeds are not considered to be "delayed income" will be treated as principal and remain in Part A of the trust.



Both the complicated calculation associated with "delayed income" and the negative tax consequences it causes in this context could be avoided if section 22-3-13 were nullified.

But what about non-tax goals such as the wife's financial security? Would nullifying section 23-3-13 reduce her income and thus, her financial security? Answer: although it will reduce her personal income stream, it will not reduce her overall financial security because the trust instrument gave her the power to invade principal for any health, education, support, or maintenance needs. Thus, if she really needs it, all of Part A is potentially at her disposal.

The purpose of section 22-3-13 appears to be to strike a fair balance between an income beneficiary and the remaindermen whose interests are assumed to be adverse to each other. But with respect to the overall estate planning strategy of the bypass trust, the interests of these two parties are not normally considered adverse.

As a result of this analysis, it appears advisable to specifically nullify the application of Utah Code section 22-3-13 with respect to the bypass portion of the trust when drafting the normal revocable family trust instrument. By doing so, the trust's accounting income calculation is simplified and the overall estate tax exposure can be minimized.

Of course, this calls into question the advisability of giving the wife the right to all the income from Part A of the trust in the first place. On the whole, it is probably still advisable to give it to her since that will allow more flexibility—if the trustee wants to invest in interest or dividend producing assets, she can do so and avoid the relatively compressed graduated rate schedule applicable to trusts by having this income distributed out to the wife and taxed to her at a lower effective tax rate. On the other hand, if she wants to invest in capital gain type properties, she can do so and avoid unnecessary distributions from the estate tax-protected portion of the trust.

Another drafting issue regarding unproductive or under-productive property revolves around Treasury Regulation section 20.2056(b)-7(h), example 2. If it is anticipated that the QTIP election will be made concerning all or a portion of Part A (the bypass portion) of the trust, the surviving spouse should be given the power to require the trustee to convert unproductive or under-productive assets into productive ones. But giving her that power does not necessarily mean she will exercise it—and in my opinion, she should not exercise it in most cases lest she inadvertently move income out of the estate tax-protected por-

tion of the trust over to her portion, which may or may not be protected from estate taxation depending upon the relative size of her taxable estate compared to the exemption equivalent of the unified credit available to her upon her death.

So it seems to me to be advisable, in drafting revocable family trusts, to nullify Utah Code section 22-3-13 with respect to the bypass portion, and in lieu of dealing with the under-productive property issue as that section does, give the surviving spouse the discretionary power to force the trustee to convert unproductive or under-productive property into productive property when the QTIP election is, or may become, desirable.

But since the law has gotten so complicated, it seems that fewer and fewer people are smart enough to see the "entire playing field" in making recommendations such as these. Therefore I submit this article not as some sort of definitive, exhaustive, and authoritative statement concerning this matter, but rather, as a starting point for discussion. If any reader sees flaws in my thinking or sees something that should be considered but was not, I encourage you to respond by a letter to the Editor stating your case.

<sup>1</sup> $\$625,000 \times .2 = \$125,000$ ;  $\$125,000 \times (1-.396) = \$75,500$ ;  $\$75,500 \times 5 = \$377,500$ ;  $\$377,500 \times (1-.37) = \$237,825$



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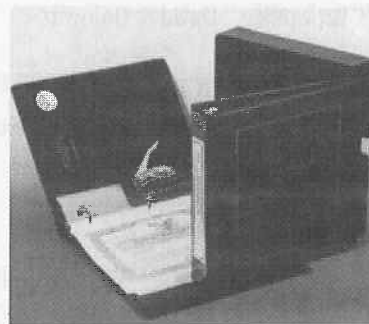
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Dennis C. Farley Feb 99 at 19

## TAKINGS LAW

SEE EMINENT DOMAIN

## TAXES/TAX LAW

"1998 Tax Update," David S. Dolowitz Mar 99 at 14

## TRADEMARKS

SEE INTELLECTUAL PROPERTY

## TRIAL PRACTICE

"Commissioner's Report," C. Dane Nolan Aug/Sep 99 at 8

"Report from the Chair,"  
Cameron S. Denning Aug/Sep 99 at 10

## UTAH DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING

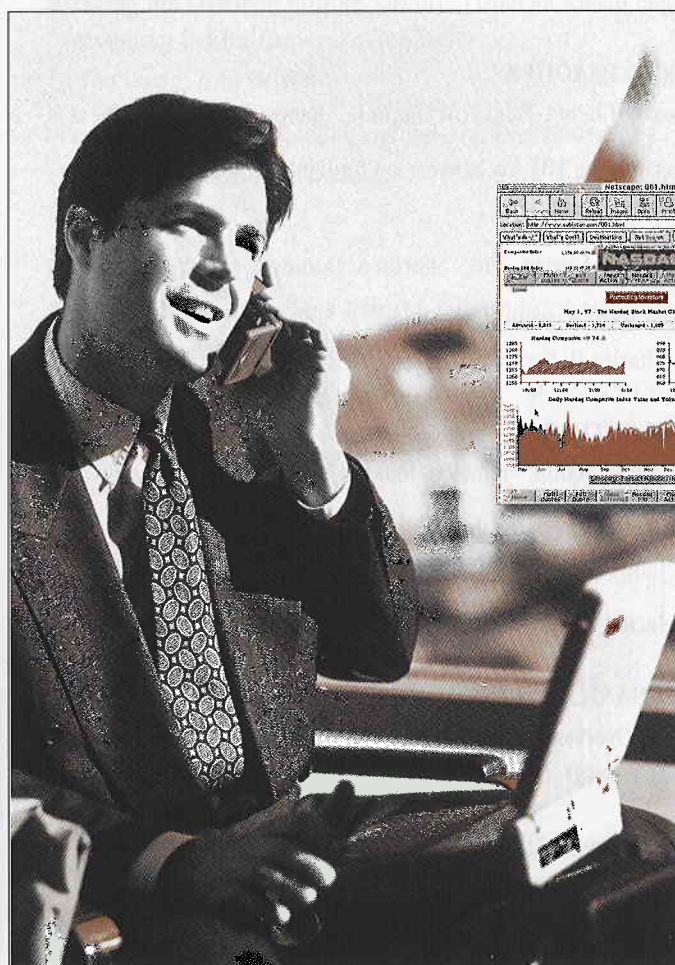
"Summary of Utah State Bar Licensing" May 99 at 26

## WATER RIGHTS and LAW

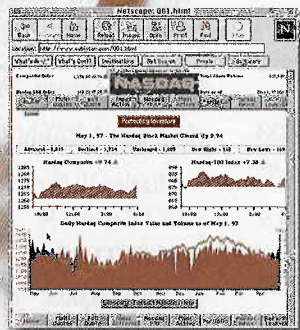
"Conveyancing and Collateralizing Utah Water Rights,"  
R.L. Knuth Dec 99 at 12

## YOUNG LAWYERS PROFILES

"Julianne Renee Blanch," Brian P. Miller Feb 99 at 35



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## Notice of Election of Bar Commissioners

Third, Fourth, and Fifth Divisions

Pursuant to the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for two members from the Third Division, one member from the Fourth Division, and one member from the Fifth Division, each to serve a three-year term. To be eligible for the office of Commissioner from a division, the nominee's mailing address must be in that Division as shown by the records of the Bar.

Applicants must be nominated by a written petition of ten or more members of the Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after January 3, and **completed petitions must be received no later than February 1**. Ballots will be mailed on or about March 1, with balloting to be completed and ballots received by the Bar office by 5:00 p.m. on March 31. Ballots will be counted on April 3.

To reduce out-of-pocket costs and encourage candidates, the Bar will provide the following services at no cost:

1) Space for up to a 200-word campaign message plus a photograph in the March issue of the *Utah Bar Journal*. The space may be used for biographical information, platform or other election promotion. Campaign messages for the March *Bar Journal* publication are due along with completed petitions, two photographs, and a short biographical sketch **no later than February 1**.

2) A set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their Division.

3) The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates are responsible for delivering to the Bar, no later than February 21, enough copies of letters for all attorneys in their Division. (Call the Bar for the count in your respective Division.)

If you have any questions concerning this procedure, please contact John C. Baldwin, at the Bar offices, 531-9077.

NOTE: According to the Rules of Integration and Management, residence is interpreted as the mailing address according to the Bar's records.

Feeling loaded down?



Then lighten up at the Utah State Bar's  
2000 MID-YEAR CONVENTION  
at the Dixie Center at St. George!  
Join us for informative and timely CLE,  
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MARCH 9-11, 2000.



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

We would like to thank all participants and volunteers for their assistance and support in this year's Food and Clothing Drive. Although this is not a contest, we would like to give special recognition to the firm of Kruse Landa & Maycock as they have once again, as in every year of the ten years we have conducted this food and clothing drive, donated more than any other firm. Thank you all for your kindness and generosity.

Leonard W. Burningham

Toby Brown

Sheryl Ross

Shelley Goff

## ***Ethics Opinions Available***

The Ethics Advisory Opinion Committee of the Utah State Bar has produced a compendium of ethics opinions that is available to members of the Bar in hard copy format for the cost of \$20.00, or free of charge off the Bar's Website, [www.utahbar.org](http://www.utahbar.org), under member benefits and services. 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 the current calendar year.

### **Ethics Opinions Order Form**

Quantity _____	Utah State Bar Ethics Opinions	Amount Remitted _____ (\$20.00 each set)
_____	Ethics Opinions/ Subscription list	_____ (\$30.00 both)

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

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Please allow 2-3 weeks for delivery.

## ***Local Law Firm Creates "Street Lawyer"***

Utah Legal Services, Inc. and the law firm of LeBoeuf, Lamb, Greene & MacRae, L.L.P. have jointly announced the initiation of a pro bono fellowship, placing a LeBoeuf associate, Julie I. Valdes, on ULS's staff for a period of three months.

LeBoeuf has sponsored similar fellowships for several years through its New York office, but this is the firm's first pro bono fellowship outside the New York area. LeBoeuf is the first law firm to establish such a relationship with ULS and is believed to be the first law firm to do so in Utah.

"We saw this as an excellent chance to bolster our pro bono program and enhance the professional development opportunities we can offer our associates," said Ralph R. Mabey, a former United States Bankruptcy Judge who is managing partner of the firm's Salt Lake City office. "ULS does exceptional work in the public interest, and we have had a solid relationship with it for many years. Having seen this kind of pro bono fellowship work advantageously elsewhere, we explored the possibility of lending ULS one of our associates for a substantial period, thinking this would give it greater

benefit than working only occasionally with a large number of lawyers on individual projects. ULS enthusiastically agreed, and we are pleased to be working with them in this way."

"We greatly appreciate the generosity of the LeBoeuf firm in letting one of their associates join Utah Legal Services for a short time," said John Beckstead, President of the ULS Board of Trustees. "Ms. Valdes was assigned to a project involving indigent mothers whose welfare benefits have been discontinued. She has already appeared at several administrative hearings, helping clients who otherwise may have been turned away. LeBoeuf has demonstrated a commitment to access to justice through this innovative partnership."



*Julie I. Valdes*

## Utah Supreme Court Announces Universal Citation Form Rule

Technological advances in recent years have resulted in court opinions becoming available soon after their release through electronic publication on computer bulletin boards, discs, and the Internet. The traditional method of citing legal authority by reference to volume and page number does not easily accommodate the new electronic environment. Many jurisdictions are adopting a universal citation form that is both medium neutral and vendor neutral.

A universal citation form generally includes the case name, the year the opinion was issued, the court that issued the opinion, a sequential number assigned to the opinion, and, for pinpoint citation, a paragraph number. On January 1, 1999, the Utah Supreme Court and the Utah Court of Appeals began to number their released decisions and to number the paragraphs within those decisions as a first step in implementing a universal citation form. At a recent meeting, the Board of Appellate Court Judges decided that the time is right to implement a universal citation system that accommodates both those who prefer printed case reports and those who prefer electronic reports.

Effective March 1, 2000, the initial citation of any published opinion of the Utah Supreme Court or the Utah Court of Appeals, released on or after January 1, 1999, in any brief, table of cases in the brief, memorandum, or other document filed in the Utah Supreme Court or the Utah Court of Appeals, shall include the case name, the year the opinion was issued, identification of the court that issued the opinion (UT for Utah Supreme Court and Utah Ct. App. for the Utah Court of Appeals), and the sequential number assigned to the opinion by the respective court. Citation to specific portions of the opinion shall be made by reference to the paragraph numbers assigned by the court. A comma and then a paragraph symbol (§) should be placed immediately following the sequential number assigned to the case. Subsequent citations within the brief, document, or memorandum should include the paragraph number and sufficient references to identify the initial citation. *Initial citations shall also include the volume and initial page number of the Pacific Reporter in which the opinion is published.* When an opinion is in slip form awaiting inclusion in a *Pacific Reporter* volume, the slip opinion form should be used. A pinpoint citation is not required in the parallel citation to the *Pacific Reporter* since the paragraph numbers assigned by the court are included in the *Pacific Reporter* version. Likewise, it is not necessary to include the year the case was published since that will be evident from the initial citation.

Examples of an initial citation to a Utah Supreme Court opinion or a Utah Court of Appeals opinion issued on or after January 1, 1999, using fictitious decisions, would be as follows:

### Before publication in Utah Advance Reports:

*Smith v. Jones*, 1999 UT 16.

*Smith v. Jones*, 1999 Utah Ct. App. 16.

### Before publication in Pacific Reporter but after publication in Utah Advance Reports:

*Smith v. Jones*, 1999 UT 16, 380 Utah Adv. Rep. 24.

*Smith v. Jones*, 1999 Utah Ct. App. 16, 380 Utah Adv. Rep. 24 (Utah Ct. App.).

### After publication in Pacific Reporter:

*Smith v. Jones*, 1999 UT 16, 998 P.2d 250.

*Smith v. Jones*, 1999 Utah Ct. App. 16, 998 P.2d 250.

Examples of a pinpoint citation to a Utah Supreme Court opinion or a Utah Court of Appeals opinion issued on or after January 1, 1999, would be as follows:

### Before publication in Utah Advance Reports:

*Smith v. Jones*, 1999 UT 16, ¶21.

*Smith v. Jones*, 1999 Utah Ct. App. 16, ¶21.

*Smith v. Jones*, 1999 Utah Ct. App. 16, ¶¶21-25.

### Before publication in Pacific Reporter but after publication in Utah Advance Reports:

*Smith v. Jones*, 1999 UT 16, ¶21, 380 Utah Adv. Rep. 24.

*Smith v. Jones*, 1999 Utah Ct. App. 16, ¶21, 380 Utah Adv. Rep. 24.

### After publication in Pacific Reporter:

*Smith v. Jones*, 1999 UT 16, ¶21, 998 P.2d 250.

*Smith v. Jones*, 1999 Utah Ct. App. 16, ¶21, 998 P.2d 250.

If the immediately preceding authority is a post-January 1, 1999, opinion, cite to the paragraph number:

*Id.* at ¶15.

Any questions about the universal citation form may be directed to:

Matty Branch, Appellate Court Administrator

450 South State Street, 5th Floor

P.O. Box 140210

Salt Lake City, Utah 84114-0210

phone: (801) 578-3834

fax: (801) 578-3999

email: [mattyb@email.utcourts.gov](mailto:mattyb@email.utcourts.gov)



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The following services are available to all members of the Bar.

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Contact **Patrick Aloia** at **641-6600**.

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Through Standard Insurance and Paul Revere a 23.5% premium discount is available. Contact **Scott Buie** at **556-1056**.

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The Bar coordinates group health programs through Blue Cross/Blue Shield of Utah and IHC. Contact **Robert Johnson** at **250-6600**.

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This is available through Continental Insurance. Contact **Don Roney** at **466-0805**.

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Discounts for public, business, financial and other information. Call **1-800-227-9597**.

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If you have questions, contact Member Benefits Coordinator Maud Thurman at 297-7031 or e-mail [mthurman@utabbar.org](mailto:mthurman@utabbar.org).

### **MEMBERSHIP BENEFITS POLICY**

From time to time the Utah State Bar may provide access to certain economic benefit programs, designed to provide a savings or other such benefit to Bar members. Through these programs, certain products or services may be offered to members at a discount. Providing such access implies no Bar endorsement or warranty of the quality of such products or services over similar products or services offered by others.

### UTAH STATE BAR ADDRESS CHANGE FORM

The following information is required:

- You must provide a street address for your business and a street address for your residence.
- The address of your business is public information. The address of your residence is confidential and will not be disclosed to the public if it is different from the business address.
- If your residence is your place of business it is public information as your place of business.
- You may designate either your business, residence, or a post office box for mailing purposes.

**\*PLEASE PRINT**

1. Name \_\_\_\_\_ Bar No. \_\_\_\_\_ Effective Date \_\_\_\_\_

#### 2. Business Address – Public Information

Firm or Company Name \_\_\_\_\_

Street Address \_\_\_\_\_ Suite \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail address (optional) \_\_\_\_\_

#### 3. Residence Address – Private Information

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Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail address (optional) \_\_\_\_\_

#### 4. Mailing Address – Which address do you want used for mailings? (Check one) (If P.O. Box, please fill out)

\_\_\_\_\_ Business \_\_\_\_\_ Residence

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Signature \_\_\_\_\_

All changes must be made in writing. Please return to: UTAH STATE BAR, 645 South 200 East, Salt Lake City, Utah 84111-3834:  
Attention: Arnold Birrell, fax number (801) 531-0660.





## AND JUSTICE FOR ALL

### 2000 Lawyers Participating in 2000

In 1999, 1,226 lawyers made contributions to "and Justice for all" either by individual donations or through donations made on behalf of attorneys by law firms. This represents a more than twenty percent increase in the number of attorneys supporting the state's non-profit legal service providers. We hope 2000 attorneys will participate in the year 2000. With approximately

5,400 active Bar members, 2000 lawyer contributions would increase our participation rate to thirty-seven percent.

You are crucial to meeting this goal. The second year of the campaign planning efforts include phonathons, local Bar efforts, matching grants, and segmented programs with team captains to encourage greater individual participation.

### Park City Fundraiser

The Park City Bar Association co-hosted a fundraiser to benefit "and Justice for all" at the Deer Valley home of Andy and Rick Barros on the evening of November 21. Guests included members of the Park City Bar, Salt Lake City attorneys and Barros family friends. The intimate gathering raised more than \$4,000, including a \$750 donation from the Park City Bar Association.

Bar member Gary W. Nielsen, who presented the check to Alan Sullivan, Campaign Chair, commented "your efforts are something we strongly believe in and support, and this is one of four charitable organizations we make donations to."

If you or someone you know would like to host a fundraiser in your community, please call us at 257-5519.



*Stewart Ralphs, Fraser Nelson, and Mark Harrington share laughs with Rick and Andy Barros at the Park City Bar Association fundraiser for "and Justice for all." The event was hosted by the Barroses.*



*Christina Miller and Gary Nielsen present a \$750 contribution from the Park City Bar Association to Alan Sullivan, Campaign Chair of "and Justice for all."*

### Senator Orrin Hatch Joins the Campaign



Fraser Nelson, Executive Director of the Disability Law Center, met with Senator Orrin Hatch in Washington D.C. on November 19 to accept a \$1,000 contribution to the "and Justice for all" campaign.

Hatch commented, "guaranteeing equal access to the courts for people without the financial means to hire a lawyer is the obligation of each one of us. Justice is a hollow word if you cannot get in the door of the courthouse." Senator Orrin Hatch is Chair of the Senate Judiciary Committee.

As far as we know, ours is the only campaign in the nation to have received support from a presidential candidate!

*Fraser Nelson, Executive Director of Disability Law Center, thanks Senator Orrin Hatch for a contribution to "and Justice for all."*

# CLE Calendar

DATES	TITLE	PLACE, TIME, CLE CREDIT, PRICE
1-13-00	<b>Collections: You CAN Get Blood From a Turnip!</b>	Law & Justice Center: 5:30-8:30 p.m.; 3 hrs CLE/NLCLE; \$40 YLD, \$55 all others
1-19-00	<b>Trial Academy 2000: Part I Jury Selection</b>	Gore Auditorium, Westminster College: 6:00-8:00 p.m.; 2 hrs CLE/NLCLE; \$30 YLD, \$40 Litigation Section Member, \$50 nonmember per seminar. <b>For six part series:</b> \$150 YLD, \$200 Litigation Section Members, \$250 non member. (See insert in <i>Bar Journal</i> )
1-19-00	<b>Legal Malpractice</b>	Law & Justice Center: 9:00 a.m.-12:00 p.m.; 3 hrs ETHICS; \$60
2-7-00	<b>Law and Economics Society: 2000 Speaker Series</b>	Law & Justice Center – Speaker – Edward Henneberry, Esq., Howrey & Simon, Washington D.C. – “Detecting Collision from Economic Data”: 1.5 hrs; \$35.00.
2-17 & 18-00	<b>Intellectual Properties Mid-Winter Institute</b>	Midway, UT–Homestead Resort: 8 hrs; \$150 for I.P. Section members, \$200 non-section members, \$30 for each additional dinner ticket. Additional registration, activities and agenda information available at <a href="http://www.utahbar.org/sites/IP/">www.utahbar.org/sites/IP/</a> and <a href="http://www.utahbar.org/cle">www.utahbar.org/cle</a>
2-24-00	<b>Mortgage &amp; Title Insurance: How to Include the House with Your Garage Sale</b>	Law & Justice Center: 5:30-8:30 p.m.; 3 hrs CLE/NLCLE; \$40 YLD, \$55 all others.
3-9 thru 11-00	<b>Utah State Bar Mid-Year Meeting</b>	St. George Utah
3-16-00	<b>Ali-Aba: 1) Retirement Plan Distribution Fundamentals for Estate Planners; 2) Financial Planning and the Practice of Law</b>	Law & Justice Center: 10:00 a.m.-12:00 p.m.; 2 hrs CLE; Program 2) 12:30 p.m.-2:00 p.m.; 2 hrs CLE; \$125 per program or \$195 if registering for both. To register: 1-800-CLE-NEWS or on <a href="http://www.ali-aba.org">www.ali-aba.org</a> .
3-23-00	<b>Employment Law: The Hire/Fire Mire (and Other Messy Stuff)</b>	Law & Justice Center: 5:30-8:30 p.m.; 3 hrs CLE/NLCLE; \$40 YLD, \$55 all others.
3-28-00	<b>Ali-Aba: Hot Issues in Employment Law &amp; Litigation</b>	Law & Justice Center: 10:00 a.m.-2:00 p.m.; 4 hrs CLE; \$165. To register: 1-800-CLE-NEWS or on <a href="http://www.ali-aba.org">www.ali-aba.org</a> .

For current seminar information and registration, access our website at [www.utahbar.org/cle](http://www.utahbar.org/cle).

## REGISTRATION FORM

Registration for each seminar must be received at least 2 days prior to ensure availability. Cancellations must be received in writing 48 hours prior to seminar for refund, unless otherwise indicated. Door registrations are accepted on a first come, first serve basis, plus a 25% late charge unless otherwise indicated.

Registration for (Seminar Title(s)):

(1) \_\_\_\_\_ (2) \_\_\_\_\_

(3) \_\_\_\_\_ (4) \_\_\_\_\_

Name: \_\_\_\_\_ Bar No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Payment: ☐ Check Credit Card: ☐ VISA ☐ MasterCard Card No. \_\_\_\_\_

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## Classified Ads

### RATES & DEADLINES

**Bar Member Rates:** 1-50 words – \$35.00 / 51-100 words – \$45.00. 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 *Utah Bar Journal*. For display advertising rates and information, please call (801)538-0526. 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. The publisher may, at their discretion, reject ads deemed inappropriate for publication, and reserves the right to request an ad be revised prior to publication.

*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.

### POSITIONS AVAILABLE

**INTERNATIONAL LEGAL REFORM**—The American Bar Association Central and East European Law Initiative (CEELI) seeks experienced attorneys to work on criminal, environmental, commercial and or civil law reform projects in Central and Eastern Europe and the former Soviet Union. Support includes all housing, transportation, and living expenses. Call 1-800-982-3354 for an application.

**BUSINESS ATTORNEY** – Seeking 1-2 attorneys with at least 5 years experience and established client base in the areas of corporate, tax, securities, commercial and/or estate planning to form practice group with attorney who has substantial client base, over 16 years experience in corporate, commercial, securities and estate planning, and downtown office space. Send resume to Christine Critchley, Confidential Box # 70, 645 South 200 East, Salt Lake City, Utah 84111.

**Associate Attorney Position Available** – Twelve lawyer, AV rated, firm in Western Colorado seeks versatile attorney with two to four years experience. Excellent academic credentials, writing and analytical skills required. Sophisticated practice in small city with year-round outdoor recreation opportunities. Send resume and writing sample to Firm Administrator, Hoskin, Farina, Aldrich & Kampf, P.C., Post Office Box 40, Grand Junction, Colorado 81502.

**Attorney/Office Manager/Project Coordinator** – Looking for more than just legal work? Semi-retired lawyer in Layton wants attorney as office manager and projects coordinator. Position involves everything from general office work to coordinating multimedia presentations, newsletters, book publishing, legal research, and trips to the Holy Land. Skills needed include Microsoft Office Suite 97; computer hardware and software capability; 0-2 years general litigation; Internet expertise. If you like Les Miz more than the Phantom, are willing to “fight city hall” if needed, and would have been a teacher if you weren’t an attorney, then fax cover letter, salary requirements and resume to (801) 771-4007.

**ERISA ATTORNEYS** – Smith & Downey, a national law firm, with a practice limited to human resources law, seeks an experienced ERISA attorney to open and manage or co-manage its Salt Lake City office. See “Professional Job Opportunities” at [www.smithdowney.com](http://www.smithdowney.com).

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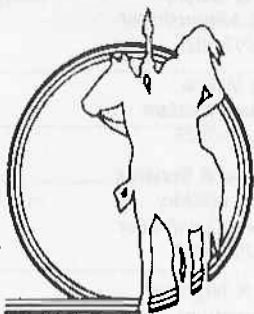
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[www.cobar.org/wsbc/index.htm](http://www.cobar.org/wsbc/index.htm)



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**N. George Daines**  
Tel: 753-4000

**Scott Daniels**  
Tel: 583-0801

**Sharon Donovan**  
Tel: 521-6383

**Denise Dragoo**  
Tel: 237-1998

**Calvin Gould**  
Tel: 544-9308

**Randy S. Kester**  
Tel: 489-3294

**Robert K. Merrell, CPA**  
Public Member  
Tel: 583-4939

**Debra J. Moore**  
Tel: 366-0132

**C. Dane Nolan**  
Tel: 531-4132

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**\*Gus Chin**  
Minority Bar Association  
Tel: 535-7767

**\*H. Reese Hansen**  
Dean, Law School,  
Brigham Young University  
Tel: 378-6383

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Immediate Past President  
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Legal Assistant Division Representative  
Tel: 263-2900

**\*James B. Lee**  
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Tel: 532-1234

**\*Scott M. Matheson, Jr.**  
Dean, Law School,  
University of Utah  
Tel: 581-6571

**\*Paul T. Moxley**  
State Bar Delegate to ABA  
Tel: 363-7500

**\*Mark C. Quinn**  
President, Young Lawyers Division  
Tel: 524-2757

**\*Carol A. Stewart**  
Women Lawyers Representative  
Tel: 297-7038

### **UTAH STATE BAR STAFF**

Tel: 531-9077 • Fax: 531-0660  
E-mail: info@utahbar.org

#### **Executive Offices**

John C. Baldwin  
*Executive Director*  
Tel: 297-7028

Richard M. Dibblee  
*Assistant Executive Director*  
Tel: 297-7029

Maud C. Thurman  
*Executive Secretary*  
Tel: 297-7031

Katherine A. Fox  
*General Counsel*  
Tel: 297-7047

Phyllis Yardley  
*Legal Secretary*  
Tel: 297-7057

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Charles R.B. Stewart  
*Pro Bono Coordinator*  
Tel: 297-7049

#### **Continuing Legal Education Department**

Connie Howard  
*CLE Coordinator*  
Tel: 297-7033

Jessica Theurer  
*Section Support*  
Tel: 297-7032

Samantha Myers  
*CLE Assistant*  
Tel: 531-9077 ext. 7060

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Toby J. Brown  
*Communications*  
Tel: 297-7027

Lincoln Mead  
*Manager Information Systems*  
Tel: 297-7050

Summer Shumway  
*Web Site Coordinator*  
Tel: 297-7051

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Darla C. Murphy  
*Admissions Administrator*  
Tel: 297-7026

Amy Nielson  
*Admissions Assistant*  
Tel: 297-7025

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Christine Critchley  
*Bar Programs Coordinator*  
Tel: 297-7022

Monica N. Jergensen  
*Conventions*  
Tel: 463-9205

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J. Arnold Birrell, CPA  
*Financial Administrator*  
Tel: 297-7020

Joyce N. Seeley  
*Financial Assistant*  
Tel: 297-7021

#### **Lawyer Referral Services**

Diané J. Clark  
*LRS Administrator*  
Tel: 531-9075

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Juliet Alder  
*Law & Justice Center Coordinator*  
Tel: 297-7030

#### **Consumer Assistance Coordinator**

Jeannine Timothy  
Tel: 297-7056

#### **Lawyers Helping Lawyers**

Tel: 297-7029

#### **Receptionist**

Marie Van Roosendaal (Mon., Tues. & Thurs.)  
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:**

Sydnée W. Kuhre  
*MCLE Administrator*  
297-7035

#### **Member Benefits**

Maud C. Thurman  
297-7031

E-mail: mthurman@utahbar.org

#### **Office of Professional Conduct**

Tel: 531-9110 • Fax: 531-9912  
E-mail: oad@utahbar.org

Billy L. Walker  
*Senior Counsel*  
Tel: 297-7039

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

Charles A. Gruber  
*Assistant Counsel*  
Tel: 297-7040

David A. Peña  
*Assistant Counsel*  
Tel: 297-7053

Kate A. Toomey  
*Assistant Counsel*  
Tel: 297-7041

Shelly A. Sisam  
*Paralegal*  
Tel: 297-7037

Gina Tolman  
*Paralegal*  
Tel: 297-7054

Ingrid Westphal Kelson  
*Legal Secretary*  
Tel: 297-7044

Rosemary Reilly  
*Receptionist*  
Tel: 297-7045

## 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. \_\_\_\_\_  
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\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity                      CLE Hours                      Type of Activity\*\*
2. \_\_\_\_\_  
Provider/Sponsor  
\_\_\_\_\_  
Program Title  
\_\_\_\_\_  
Date of Activity                      CLE Hours                      Type of Activity\*\*

#### Continuing Legal Education

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

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

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



## **\*\*EXPLANATION OF TYPE OF ACTIVITY**

**A. Audio/Video Tapes.** No more than one-half of the credit hour requirement may be obtained through self-study with audio and video tapes. See Regulation 4(d)-101(a).

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

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

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

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

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

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

**DATE:** \_\_\_\_\_ **SIGNATURE:** \_\_\_\_\_

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

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