

Utah Bar Journal

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

COVER: Indian Paintbrush, Arches National Park, by first time contributor, Jeannine C. Dameworth, CLA, member of the Legal Assistant Division of the Utah Bar, ICON Health & Fitness, Inc.

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1. Letters shall be typewritten, double spaced, signed by the author and shall not exceed 300 words in length.
2. No one person shall have more than one letter to the editor published every six months.
3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal* and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.
4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published which (a) contains defamatory or obscene material, (b) violates the 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.
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The Editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine.

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1. Length: The editorial staff prefers articles having no more than 3,000 words. If you cannot reduce your article to that length, consider dividing it into a "Part 1" and "Part 2" for publication in successive issues.
2. Format: Submit a hard copy and an electronic copy in Microsoft Word or WordPerfect format.
3. Endnotes: Articles may have endnotes, but the editorial staff discourages their use. The *Bar Journal* is not a Law Review, and the staff seeks articles of practical interest to attorneys and members of the bench. Subjects requiring substantial notes to convey their content may be more suitable for another publication.
4. Content: Articles should address the *Bar Journal* audience, which is composed primarily of licensed Bar members. The broader the appeal of your article, the better. Nevertheless, the editorial staff sometimes considers articles on narrower topics. If you are in doubt about the suitability of your article for publication, the editorial staff invites you to submit it for evaluation.
5. Editing: Any article submitted to the *Bar Journal* may be edited for citation style, length, grammar, and punctuation. Content is the author's responsibility—the editorial staff merely determines whether the article should be published.
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Civility and Professionalism

by Charles R. Brown

Civility and professionalism are the hallmarks of our profession. The Bar and the judiciary encourage that standard of conduct and many of our members pay lip service to it. However, it is my observation that there are still, unfortunately, members of our profession who continue to engage in a "win-at-all-costs," scorched earth approach in their practice. We have all encountered negative experiences with them, in both a litigation and a transactional context. In a litigation context, they are the ones who fail to act in a civil manner in granting reasonable extensions, who aggressively pursue intellectually dishonest arguments or who set forth theories of the case in their pleadings which are, from the onset, not supported by the facts or any present or reasonable extension of the law. They have read "Winning Through Intimidation" and often engage in bombastic, aggressive conduct in order to brow-beat the courts and opposing counsel into submission. In the transactional context they take unreasonable positions in negotiations and utilize drafting chicanery to create an unfair document which may not accurately reflect the transaction negotiated and understood by the other parties.

As we approach the 21st Century, it is time for each of us to make a strong statement by publicly standing up to those bullies. Like the character Howard Beale in the movie "Network," we need to shout from the windows (metaphorically) "I am mad as hell and I am not going to take it anymore!" This will require leadership from the Bar, the judiciary and the members in order to return dignity and civility to our profession. It is my goal and that of my two successors, David O. Nuffer and Scott Daniels, to eventually adopt a more formal code of professionalism for the Utah State Bar. There is existing leadership on that front from various sources. In August 1998, the ABA Section of Litigation, Young Lawyers Division, Section of Anti-Trust Law, Section of Business Law and Court and Insurance Practice Section combined to recommend guidelines for conduct. The preamble to those guidelines includes the following statement:

"A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigor-

ously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human societal problems in a rational, peaceful and efficient manner."

The ABA guidelines include specific recommendations of conduct which are classified under four subheadings. The subheadings are: "Lawyer's Duties to Other Counsel; Lawyer's Duties to the Court; Court's Duties to Lawyers; and Judges' Duties to Each Other."

The American Board of Trial Advocates ("ABOTA") has also adopted its Principles of Civility, Integrity and Professionalism which are similar to the ABA recommendations.

The State of New Mexico has gone farther than most states. It has adopted "A Lawyer's Creed of Professionalism of the State Bar of New Mexico (the "New Mexico Creed")." The New Mexico Creed includes five subheadings. The first one simply states: "In all matters: My word is my bond." The remaining subheadings are similar to those of the ABA and include various recommendations under each subheading. Those subheadings are: "With respect to my clients;" "With respect to opposing parties and their counsel;" "With respect to the courts and other tribunals;" and "With respect to the public and to our system of justice."

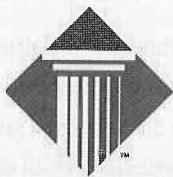
Although a violation of the New Mexico Creed does not generally rise to the level of an ethical violation, the United States District Court for the District of New Mexico has taken it to a new level. Rule 83.9 of the local Civil Rules for that Court states:

"Rules of Professional Conduct. The Rules of Professional Conduct adopted by the Supreme Court of the State of New Mexico apply except as otherwise provided by local rule or by Court order. *Lawyers appearing in this District must comply with a Lawyer's Creed of Professionalism of the State Bar of New Mexico.*" emphasis supplied.



Pursuant to that Rule a Federal District Judge in New Mexico has the ability to sanction an attorney who violates the New Mexico Creed.

Before my term expires I hope to publish the ABA Recommendations, the ABOTA Principles and the New Mexico Creed on our website so that our members will have instant access to those proposed standards. Although those standards of conduct may not be mandated and violations of general principles of civility and professionalism cannot give rise to disciplinary sanctions, we must be more aggressive in raising the bar. As individual practitioners we should strive to adopt higher principles in our actions and behavior. We should also send a message to those members of our profession who do not meet an acceptable standard by refusing to tolerate their conduct. Each of us, including members of the judiciary, must not be afraid to publicly condemn such egregious conduct. I would appreciate other thoughts and suggestions any of you may have on how we may better improve the level of professionalism in Utah.



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The Future of Legal Systems, The Legal Profession and the Rule of Law: A Paradigm for a Season of Change

by David Nuffer

The legal profession, the courts and the legal system itself confront many current challenges. Competition from other professionals, public frustration over access to the judicial system, overloaded court dockets, the advent of technology, and the cost and delay of litigation all demand our attention.

In a season of many pressures, a controlling paradigm – a central vision – is needed to ensure that essential traditional values are retained, while unnecessary and outmoded vestiges are discarded. A paradigm provides guidance and a sense of unity for participants as new opportunities are confronted. Such a paradigm is even more valuable when multiple challenges are concurrently faced.

This article will examine the points where the legal profession and legal systems interface with society, and suggest reasons for existing tensions. The social context or market pressures which lead to these challenges will be discussed. The article concludes with a proposal for a paradigm to guide lawyers, judges and other legal professionals in this season of change.

Current Challenges for the Legal Profession

Currently, the legal profession is dealing with many significant (and some would say threatening) developments:

Multi-disciplinary practice (“MDP”). The practice of law, accounting and other professions together, in unified ownership and function, may soon be permitted. This has been prohibited for 30 years by the ABA Code of Ethics, but it is already happening in the face of regulation. Proposals for permitting MDP include suggested revisions of long-standing ethical rules.¹

Practice of law by non-lawyers. Over the last 100 years in America, the practice of law has generally been confined to lawyers. Now, with increasing rapidity, we see others take up activities formerly presumed to be the practice of law, including representation in tax and social security proceedings; real estate closings; domestic relations; dispute resolution; document preparation; and tax advice and compliance. One major competitor is computer software.

Non-lawyer legal technicians, document preparers, and independent adjusters share work lawyers once controlled.²

Diversity in the Profession. The diversity of American society is not reflected in the legal profession. The overwhelmingly white profession is not relevant to the 30% of Americans who are of color. Male dominance of the profession does not reflect gender balance in law schools. These disparities cause disconnection with those who do not feel they are a part of the system.³

Professionalism. Lawyers and the public complain about lawyer tactics, in and out of the courtroom. Highly publicized trials and lawyers create questions in the public mind about what lawyers can or should do. The result has been a lack of trust in the judicial system and its participants.⁴ Substantial efforts to improve behavior and the public impression of attorneys and the system are underway, led by Bars and Courts.⁵

Current Challenges for the Judicial System

There are also significant challenges that more broadly affect the legal and judicial systems. While these affect judges and courts first, lawyers are also impacted.

Pro se litigation. The Courts, because of the overwhelming number of pro se litigants,⁶ are redesigning their processes to facilitate participation by non-lawyer customers. These court system users are generally unfamiliar with the formalities of traditional court processes. Procedures are simplified to meet the needs of these new court participants.⁷ Pro se litigation therefore increases with this improved access, and lawyers lose market share in domestic relations, landlord-tenant, creditor bankruptcy and small claims markets.

Judicial Outreach. To counter antipathy or apathy on the part of the public or other branches of government, judges

DAVID NUFFER is a practicing lawyer and part-time judge in St. George, Utah, and president-elect of the Utah State Bar. The views in this article are his alone.

and court staff are aggressively seeking methods of community involvement. Courts seek to reduce unnecessary distance from the public and increase familiarity with the system.⁸ A constituency is vital in appropriation debates and when encroachments on judicial independence occur.

Cost and Delay. In an effort to resolve disputes for more people, courts are implementing ADR and using a variety of techniques to reduce the time and expense of litigation.⁹ These include time limits on trials, discovery limits and disclosure requirements in civil cases. Legislatures often create collateral attack restrictions in criminal cases.

Jury Reform. Courts are improving the jury experience for citizen participants in the legal system by adopting plain english jury instructions and providing web-based orientation, registration and scheduling.¹⁰

Challenges for the Legal System

Some challenges, such as the attacks on the tripartite concept of government, are so broad that they affect not only lawyers and courts, but also the entire system of laws. As society becomes more attuned to instant information and decision making, and more familiar with other systems of justice around the world and works with more accessible branches of government, the public is less familiar with fundamental elements of the legal system. The public sees justice gone awry in headline cases and thinks TV courtrooms are accurate portrayals. As this happens, the public understands and trusts the legal system less.

Judicial Independence. To reduce attacks on judges and the judiciary, Bars and Courts are speaking out on the value of the third branch of government, and the need of the judiciary for independence.¹¹

Challenge of delivery of legal services to the poor and middle class. The cost of legal services is such that the poor and most of the middle class cannot afford legal services. This pure economic factor is driving many changes.¹² How many times has it been accurately pointed out that most lawyers cannot afford a lawyer?

Emergence of alternative dispute mechanisms. While arbitration and mediation are championed by many lawyers, many arbitrators and mediators are non-lawyers.¹³ Construction arbitration, for example, has traditionally involved non-lawyers. Non-lawyer mediators are permitted because the resolution is not law based – that is, legal rights are not necessarily preserved.

Racial Fairness. Surveys document the public impression that the legal system, from law enforcement to prisons, is unfair to racial and ethnic minorities.¹⁴ This creates a distrust which many courts are working to overcome.¹⁵

Rights of Accused. As a response to judicial criticism in criminal cases, educational campaigns are informing the public why defendants deserve a defense and appeal.¹⁶

Some of these challenges to the entire system are being met by “Justice Initiatives.” These are programs designed to meet public objections by changing the system and/or educating the public more about features that cannot or should not be changed. Many of these efforts are related to the National Action Plan on the Public Trust and Confidence which was developed in May 1999 in Washington, D.C.¹⁷

Challenges for Bar Associations and Supervising Courts

Bar associations (often supervised by state Supreme Courts) face this variety of pressures. Bars and Courts have the added complication of a potential divergence of interests. For example, to meet the challenge of pro se litigation, courts assist pro se litigants. Lawyers who are faced with more pro se opponents have more challenges in those cases, and lawyers who formerly practiced in the areas where lawyer assistance is no longer needed will lose market share.

The profession also faces internal dissonance as litigators, government, corporate, and transactional lawyers and law professors and judges all assert their independence and distinctions from each other. Added complexity arises when lawyers in different states assert that the geographical barriers between states are irrelevant to their licenses.

The Roots of these Challenges

Many of these current pressures are symptomatic and related. Seaborn Jones, past president of the Georgia Bar and president of the National Conference of Bar Presidents, has stated that the current issue of multi-disciplinary practice is a symptom, not a root cause. In fact, most of these challenges reflect the detachment of the legal profession from society. As Chief Justice Thomas Zlaket of the Arizona Supreme Court has stated, lawyers and legal processes are irrelevant to most Americans because no one can afford us. This detachment and distance, coupled with genuine unmet needs for legal services, will drive change. Those involved in the legal system may participate and shape this change if they have adequate vision.

There is no debate about the magnitude of the demand for

unmet legal services. It is perplexing that in this time of greater affluence, legal services are less generally available. In this time when some lawyers' salaries are reportedly rising to unprecedented ranges, and there are more lawyers in the market, legal help is paradoxically less accessible.

The report of the ABA Commission on NonLawyer Activity in Law Related Situations found that "there are currently insufficient sources of affordable legal help for all low and moderate-income persons . . ."¹⁸ This is more alarming than it may sound because the low- and moderate-income group is so large. The Commission report notes that unmet legal needs are very large:¹⁹

State	Year	Unmet Needs
New York	1989	3,000,000
Illinois	1987	800,000
Massachusetts		320,000
National		19,000,000

Societal Change

Beyond the tensions facing lawyers, courts, and legal systems there are changes in society which will lead to further challenges. Examination of societal change helps understand sources of challenges and forecast areas of future challenge.

Society has become more divergent; democratic; informed; comparative; value minded; and less trusting. These changes have serious implications for a profession which depends on uniform application of laws, authoritative enforcement, premium pricing due to extensive education and resource requirements; and which has always depended on respect and deference.

Long respected institutions such as Congress, the Presidency and the Courts are victims of low public esteem. Public trust and confidence in lawyers is similarly challenged. High profile cases have attracted attention and focused on inequitable and unmet results, while the sound daily work of the courts is ignored.

Information is no longer valued as an independent commodity but as a means of leading customers to purchase services. Encyclopedia Britannica, still in print at \$1250 per set, is available on-line at no cost, supported by advertising.²⁰

Transactions no longer depend on face-to-face development of trust, but on ability to find the right product at the right price. Dell Computers sells 40 million dollars a day over the internet.²¹ Amazon Books grew from nowhere to acquire major bricks and mortar providers, and become a host to Z Shops and the Amazon Community.²²

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Beyond the fundamental nature of societal changes, the rate of change has accelerated. Color television took years to predominate over black and white, and fax machines took a decade to completely populate lawyers' offices, but the internet has become pervasive in five years.

More fundamental are increased mobility and worldwide sense of community, and changes in family structure. Literally, people now live in a much different world than just a few years ago.

Lack of Change in Lawyers, Courts, Legal Systems

Thankfully, some say, in spite of societal changes and the acceleration of change, law and legal structures have not changed much over the past 100 years.²³ New legislation and procedures regularly appear, but there is an absence of marked change. We have seen no transition as dramatic as that from railroad to air; newspaper to radio and TV; horse to automobile; bleeding by barbers to medical assistance by trained doctors. This lack of change in the legal profession and structures is regarded by some as validating the legal institutions and procedures. However, the multiple challenges listed above may indicate that the strain is increasing, just as the absence of a large earthquake indicates pressure along fault lines is growing dangerously great.

Institutional Precedent is Recent

As we consider responses to the challenges discussed above, we must remember that the context in which we operate is not inherently valid. Much of the precedent on which we comfortably rely is relatively recent.

Litigation has only been recently seen as a method of resolution for all human problems. Proliferation of laws and rights, and a national sentiment toward litigation has created unprecedented pressures on courts. A more mobile society, less dependent on neighborhood relations and community trust, in which even familial relations are transitory, resorts much more to the impersonal legal system for resolution. The contentious nature of society has increased. Lawyers taught to wield the litigation hammer see every problem as a nail.²⁴ Courts have never been so numerous, and never so crowded.

The rules against fee sharing between lawyers and non-lawyers are only 30 years old. The rule was adopted in 1969 but recommended for elimination by the Kutak Commission in 1981. This rule is, however, argued to be a fundamental principle against which all new forms of legal practice must be measured.

Rules regarding unauthorized practice and the protection of the professional monopoly are also relatively recent. Most bar

associations are less than a century old.²⁵ Prior to that time, law was a matter of training and attainment in the market. Licensed lawyers are a relatively new phenomenon, and the concept of exclusivity is even more recent. The historic precedent for the institutional profession is not deep.

In much of the current debate about change, the "core values of the profession" are extolled as the ultimate paradigm, against which all proposals must be measured.

The [ABA MDP] Commission is particularly mindful that the principal arguments raised in the past, and again now, for retaining such prohibitions relate to concerns about the profession's core values, specifically professional independence of judgment, the protection of confidential client information, and loyalty to the client through the avoidance of conflicts of interest.²⁶

The "core values" are admittedly essential to the present form of the legal profession. However, those core values must be recognized as contextual, not absolute.

Tactical Blunders

Some responses of the legal profession to change reveal tactical errors. These unfortunate interfaces of lawyers and reality demonstrate the need for new thinking.

The Texas Bar stood against technology and democracy when it attempted to declare that Quicken Family Lawyer was engaging in the unauthorized practice of law.²⁷ Without any demonstration that software actually inflicts greater harm than that inflicted by lawyers, a very popular solution was fought in a very public forum. The universal response of the market was ridicule and resentment. The conflict was solved, however, in the view of the Texas Bar, when the statute regarding unauthorized practice was amended to except computer software.²⁸ The law was no longer being violated. It was then apparent that substantive client protection was not the Bar's concern; just technical enforcement of a law providing turf protection.

The approach to delivery of legal services to the poor also demonstrates counter-market intuition. Instead of creating new means to deliver affordable legal services, the Bar has attempted to meet the need by government subsidy or by laudably encouraging lawyers to *give* services to the poor. This attempt to circumvent market forces is rightly characterized as fulfillment of a lawyer's professional or ethical duty. However, that duty can only meet a portion of the need. Lawyers' provision of free or reduced cost legal services could meet the need when 5% of the market could not afford to pay, but donation of

legal services will not meet the unmet legal services need when most of society is priced out of the market. And with the high cost of delivery of traditional legal services, particularly in litigation, it is impossible for government subsidy to give equal protection to the financially disadvantaged.

Causes and Perils of Detachment

How did legal institutions get so detached from society? In some ways, our strengths have blocked our vision. The traditions, precedent and heritage which define the rule of law have helped lawyers assume they must preserve the past in all respects. The hierarchy of the legal profession with extensive educational requirements, followed by slow progression through junior practice to senior practice and judicial positions, has ensured stability and continuity. However, this relatively rigid environment is in marked contrast to a world in which teenagers run complex computer networks.

An article appearing in the *Utah Bar Journal* in November, 1998, suggested that failure to adapt to change would result in a shrinking market for a reliquary profession. The article repeated the metaphoric suggestion that lawyers might be the railroads of the future.²⁹ A group of railroad lawyers reacted immediately, insisting that railroads continue to be a vital part of society.³⁰ The railroad lawyers were right. Railroads continue to transport – but they are not the prime means of transportation as they were in 1865-1910. Now, less than 1% of passenger travel by train and only 40% of freight moves by train. Railroads are still railroads but they are not the essential means of transportation for most Americans.

Lawyers may indeed face the same fate as railroads. Lawyers may continue to be what they always have been, but serving an ever-shrinking percentage of the market, sufficient in the knowledge that they have upheld traditions and heritage even though most of society thinks them irrelevant. Lawyers may continue to move freight and a few passengers, but *we cannot tell everyone else they cannot travel*.

This same fate could meet courts which cannot resolve disputes for most citizens and legal systems which do not have the confidence of minorities who are ever increasing as participants in society. The needs will be met, and those in need will turn elsewhere.

“Mom and pop” book and dry goods stores did nothing to cause their decline; they were overtaken by other alternatives which arose around them. There are Amazons and Walmarts which will arise, in response to market demand, in the legal arena.

Possible Consequences of Failure to Change

Lawyers, the courts, the judicial system and all legal systems must start to respond more actively to society. The strain of maladaptation may otherwise become so great as to inspire revolutionary change. Such change can be productive but is more disruptive than managed change. Such change runs the risk of harming critical institutions and discarding essential values.

Change could happen suddenly, arising outside the legal profession. Congress or state legislatures could create a class of legal work which would not require a lawyer's license. Internet based document services may proliferate with such intensity, evanescence and speed that no effective enforcement can be sought. Classes of non-lawyer legal professionals may proliferate so rapidly, with or without government sanction, that there will be no opportunity to respond.

Change may also be gradual rather than revolutionary. There may be a Declaration of Irrelevance rather than a Declaration of Independence. Slowly, the market may simply move to other providers and other arenas. In the past, alteration of the definition of the unauthorized practice of law by practice, and changing expectations of lawyers has allowed legal markets to pass to title companies, to those appearing in administrative tax and social security proceedings and to banks and trust companies. Generation-long incremental change has crept, and may continue to do so in the future.

Lawyers, judges and others involved in the judicial system must listen to the voices calling for change and must be actively involved in formulating the future. Refusal to come to the table will not prevent change, but only result in change which occurs without our involvement.

The Need for A Larger View

There are fundamental deficiencies in the interface of legal systems with the public. Access is probably the most critical. A legal system that is inaccessible is not socially acceptable. A legal system that is incomprehensible is not serviceable.

As trustees of the system – as officers of the court – we must look beyond the boundaries of the profession and permit and facilitate new means of delivery of legal services. This necessitates implementation of a paradigm to guide developments.

As we examine the larger view, considering not just the preservation of the profession, or the method of litigation, or any traditional behavior, we must define a guiding principle. An expression of the eventual goal in terms of the most core value will translate the value of the past into the context of the future.

Respect for societal demands does not mean we must abandon the past. We must, however, actively select from the past and adapt to the present. There are both vital and superfluous elements in traditions. It is possible to retain *and* renew; preserve *and* progress; institutionalize *and* improve. Entrenchment in tradition has had the beneficial affect of preserving values but it has also had the prejudicial effect of leaving lawyers and legal institutions behind because we have not distinguished between the core values and those vestigia which are nonessential.

The New (and Old) Paradigm

To successfully adapt, *primary value must be placed on the rule of law*. The rule of law must be implemented as a meaningful part of society. Barriers to making law effective in people's lives must be overcome. Rules, practices and traditions which stand between people and law must be regarded with suspicion. The concept of the rule includes standards and processes which give reliability and predictability to life.

Regard for the rule of law as a primary value requires that we think outside the box of traditional lawyering and dispute resolution. Lawyers and judges must unselfishly abandon protection of the legal profession and traditional processes in the courts. The fundamental values are in

- the state's authority to create peaceful resolution of disputes, *not* in the system of litigation.
- the certainty of the rule of law; *not* in its uniqueness in each jurisdiction.
- assurance of competence; *not* an exclusion of those who are dissimilar.
- ensuring certainty in relationships; *not* in the perpetuation of specific types of relationships.

Each area of the law, legal systems, and practice must be similarly examined. After isolating the core values of law, the rule of law (first), legal systems (second) and the legal profession (last), we must ask "How will we express the essential values in the new world and translate them into the new social framework?" We must drop our primary focus on the profession and existing institutions and look to the more fundamental values of *law* and *peaceful resolution*. If we insist on holding to less central professional norms, we may incite counteraction in which the more fundamental value of the rule of law – the fabric of society – could be lost.³¹

This "new" paradigm is not really new – it is expressed as a fundamental principle in the Utah rules of integration, and underlies all that has developed in our legal system. However, the complexity and weight of the structures built on this value

have obscured it from our view. We must again look at the sound foundation, clearing away the ornamental landscaping which contributes less to the strength of the house, but which often attracts the most attention and requires the most maintenance.

A commitment must be made to apply the rule of law consistently, uniformly and in a way that its benefits will be accessible to all. The structure of institutions, the traditions of the profession or the perceived importance of other considerations cannot be vaunted to interfere with this goal. The needs of the market must rise in priority in our new analysis. A system that does not meet the needs of the market will not endure, no matter how regulated.

Implications of the Paradigm

There are many potential implications of the paradigm. New framing of issues and new prioritization of values will occur. Debate will mature new views of existing problems. Seen in the light of the fundamental value of the rule of law and a system of laws, against the potential loss of that great value, the "core values" of the profession are rather small.

For example, the terminology of "Unauthorized Practice of Law" will be abandoned as inwardly focused. From the perspective of the public, the challenge is delivery of legal service – the public do not care through which practitioner the service is delivered. Delivery of the rule of law to the public is the goal. The fact that long (or recent) standing licensing requirements prohibit this cannot be taken as self-evident proof of an evil.

Similarly, the issue of Multidisciplinary Practice cannot be viewed only in terms of its potential impact on the internal ethical rules of the legal profession. In analyzing this issue societal trends must be seen first:

- the market trends toward mergers, one-stop shopping and joint branding and marketing;
- the effect of technology on delivery of all services; democratization of knowledge, with almost universal access to information; and
- complexity of life generally, with multi-professional implications in most transactions and disputes.

Against that backdrop, bringing the rule of law into transactions and dispute resolution, alongside other professional competencies, must be facilitated.

As perhaps the best example of the need for the new paradigm, consider the courts. At the front line, they sense the demand from individuals who want legal services without the aid of lawyers. Because they are market-based, the courts have been

more ready to adapt than other segments of the legal system. Court clogging and demands on staff for explanation of procedures have compelled courts to make legal process and substantive counseling available to pro-se litigants. The courts have adapted rules to the needs of the market because they cannot select their market. Lawyers may deny access to those who are unprepared or financially unable. Courts cannot.

New Approaches Are Needed

As lawyers, courts and others in the legal system approach the environment of change, the overriding goal should be to bring the benefits of the rule of law to all of society. We must facilitate and accelerate (rather than retard) efforts which meet the needs of the public. To simply say that "it can only be done one way – the old way," and that those who cannot meet the lawyers' price will have to go elsewhere is to declare that lawyers are abdication society's needs.

The risk of meeting fewer and fewer persons' legal needs is not just a loss of income for lawyers but a fundamental loss of the legal system. A system of laws which serves few will be abandoned. Lawyers and judges are the trustees who cannot let this happen. Leaders who have a vision of the essential values and principles

of our legal system and the rule of law, who are also in touch with the changes in society, can ensure that the rule of law and that its benefits will be more universally applied in the future.

¹American Bar Association (hereafter "ABA") Commission on Multidisciplinary Practice (hereafter "MDP"), Final Report, Appendix A, <http://www.abanet.org/cpr/mdpappendix.html>. See also MDP Commission Updated Background and Informational Report And Request For Comments, <http://www.abanet.org/cpr/febmdp.html>. See also ABA Commission on NonLawyer Practice in Law-Related Situations: A Report with Recommendations, August 1995, (hereafter "NonLawyer Practice Report") a portion of which is found at <http://www.abanet.org/cpr/nonlawyer.html>.

²See, generally, Nonlawyer Report, pages 23-51.

³Putting a Diversity Program in Place, *The Young Lawyer*, December 1997 at <http://www.abanet.org/yld/tyl/dec97div.html>; Commission on Opportunities for Minorities in the Profession, <http://www.abanet.org/minorities/home.html>; American Bar Association, Section of Business Law Diversity Plan 1999 <http://www.abanet.org/bus-law/diversity/99-divplan.html>.

⁴See the summary of the survey "How the Public Views State Courts" conducted by the National Center for State Courts and funded by The Hearst Corporation at http://www.ncsc.dni.us/PTC/NAP/NAPdraft21.htm#part1_1.

⁵See the report of the National Conference on Public Trust and Confidence in the Justice System held May 14 - 15, 1999, <http://www.ncsc.dni.us/PTC/Ptc.htm>, and the National Conference of Chief Justices National Action Plan on Lawyer Conduct and Professionalism, <http://ccj.ncsc.dni.us/Natlplan.html>.

⁶See, for example, http://dmoz.org/Society/Law/Self-Help/Pro_Se_Representation/.

⁷See the court services summarized in the ABA Office of Justice Initiatives Fact Sheet on Pro Se Litigation at <http://www.abanet.org/justice/farprose.html> and the resources of the

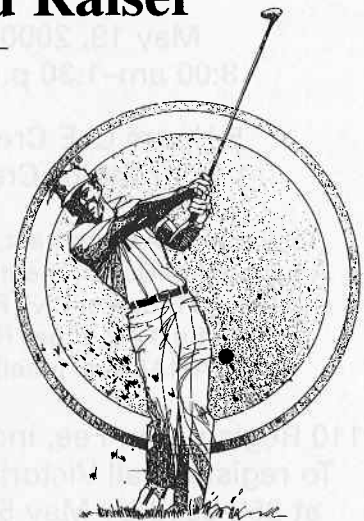
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⁸*Judicial Outreach on a Shoestring: A Working Manual* by Judge Richard Fruin, ABA, 1999. See also Creating Court-Community Partnerships" at <http://www.ajs.org/community3.html> and Community Courts: Prospects and Limits, David B. Rottman, Ph.D. National Institute of Justice Journal (August 1996) Issue No. 231 (pp 46-51) found at <http://www.ncsc.dni.us/research/cfc/nij2-rev.htm>.

⁹Paula Hannaford, Thomas Munsterman, Jury Trial Innovations, National Center for State Courts, and Pamela Casey, "Defining Optimal Court Performance: The Trial Court Performance Standards," Court Review – Winter 1998 available at http://www.ncsc.dni.us/research/TCPS_Casey%20Article.pdf.

¹⁰Roadmaps: The American Jury: Changes for the 21st Century, ABA Office of Justice Initiatives; Enhancing the Jury System: A Guidebook for Jury Reform, American Judicature Society. See Generally "Jury News," <http://www.ncsc.dni.us/RESEARCH/JURORS/>

[Jurynews.htm](http://www.jurynews.htm).

¹¹An Independent Judiciary: Report of the [ABA] Commission on Separation of Powers and Judicial Independence, <http://www.abanet.org/govaffairs/judiciary/>; Roadmaps: Judicial Independence, ABA Office of Justice Initiatives, <http://www.abanet.org/justice/pubs/rjudiciary.html>; The Importance of Judicial Independence <http://www.ajs.org/cji/importance.html>; and resources at <http://www.faircourts.org/>.

¹²Justice Improvement Clearinghouse Fact Sheet: Access to Legal Services, <http://www.abanet.org/justice/faqaccess.html>.

¹³Utah Code Ann. § 58-39a-5 and Utah Admin Code. § R156-39a-302a.

¹⁴Utah Task Force on Racial and Ethnic Fairness in the Legal System, <http://courtlink.utcourts.gov/specproj/retaskforce/>.

¹⁵American Bar Association Fact Sheet: Racial Bias in the Justice System, <http://www.abanet.org/justice/faqbias.html>.

¹⁶"Promoting the Right to Counsel – Talking Points, Useful Information and the Law Concerning Indigent Defense and the Value it Brings to the Citizens of Wisconsin," State Bar of Wisconsin Indigent Defense Committee, 1998.

¹⁷Report of the National Conference on Public Trust and Confidence in the Justice System held May 14 - 15, 1999, <http://www.ncsc.dni.us/PTC/Ptc.htm>, and David B. Rottman and Alan J. Tomkins, "Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges," Court Review – Fall 1999, available at <http://www.ncsc.dni.us/research/CR%2036-3%20Rottman.pdf>.

¹⁸NonLawyer Report, *supra*, note 1, p.79-80.

¹⁹*Id.*, p. 77.

²⁰<http://www.britannica.com>.

²¹Press Release, February 15, 2000, "Michael Dell Says Internet Will Be As Fundamental As Electricity" http://www.dell.com/us/en/gen/corporate/press/pressoffice_us_2000-02-15-sf-000.htm.

²²Robert D. Hof, "What's With All the Warehouses?," *Business Week*, November 1, 1999.

²³An excellent history of the development of the legal profession is contained in *NonLawyer Activity in Law- Related Situations: A Report with Recommendations*, September 1995, from the ABA Commission on Non-Lawyer Practice. p. 13-23.

²⁴John Flores is my source for this powerful image.

²⁵See NonLawyer report, at page 17.

²⁶Report of ABA Commission on Multidisciplinary Practice, <http://www.abanet.org/cpr/mdpreport.html>. See also, Facing the Tide of Change by the Con-MDP Subcommittee Carol McLean Brewer, John Hume, Michael Nachwalter, Katherine Clark Silverglate, *Florida Bar Journal*, March 2000, <http://www.flabar.org/newflabar/publicmediainfo/TFBJournal/mar00-2.html>.

There are core values of the legal profession involved in this issue and to this date we have not seen any "empirical" data that come close to overcoming these core values.

²⁷*Unauthorized Practice Of Law Committee v. Parsons Technology, Inc d/b/a Quicken Family Lawyer*, 1999 WL 47235 (N.D. Texas).

²⁸"During the 76th state legislative session just ended, the legislature passed House Bill 1507 sponsored by Rep. Steve Wolens of Dallas, a lawyer, to specifically exempt from the definition of the practice of law self-help books and computer software." <http://www.texasbar.com/barinfo/tbj/july99/exec.htm>.

²⁹David Nuffer, "Are Lawyers the Railroad of the Future?" *Utah Bar Journal*, November 1998, p. 7-8.

³⁰Dennis C. Farley, "Railroads: The Lifeblood of the Nation," *Utah Bar Journal*, March 1999, p. 19.

³¹This is consistent with the NonLawyer Report's recommendation that "Today's challenge to the profession is how to make the system more accessible and affordable to persons with low- and moderate-incomes." P. 83.

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The Defense Expert's Guide to Juvenile Court (SYO and Certification)

by Katherine Bernards-Goodman

Introduction

So you've been to juvenile court a few times and you feel you know your way around. Then your neighbor/relative's kid throws you a loop. He goes out and does a "biggie." The defendant's family brings you a copy of an Information, (not a juvenile petition). What's coming now?

You first need to determine what statutory scheme you will be operating under. There are three possible ways a juvenile can become an adult. One possibility is "Certification" under U.C.A. Section 78-3a-502(3) and 78-3a-603 *et seq.* The second is the newer "Serious Youth Offender Statute," commonly referred to as "SYO," U.C.A. Section 78-3a-602 *et seq.* And the third, is the "Direct File Statute," U.C.A. Section 78-3a-601. You will need to know which statute applies so you can prepare for the different burdens of proof and different criteria to be discussed in the hearings.

Direct File

If a juvenile is 16 years of age or older and has committed a Murder, U.C.A. Section 76-5-203, Aggravated Murder, U.C.A. Section 76-5-202, or any felony after having been committed to a secure facility,¹ she will be a Direct File case.

There will not be a hearing in Juvenile Court on this matter. Your first hearing should be conducted in the adult system and you will proceed from that time forward, with your preliminary hearing, etc., being conducted in the adult system. There is no provision for recall to juvenile court.

This statute was designed in response to the Utah Court of Appeal's concerns that the previous statute (which left the decision to file in juvenile court or adult court up to the prosecutor), allowed too much prosecutorial discretion resulting in a violation of the uniform operations of law. *State v. Mohi*, 901 P.2d 991, (Ut. Ct. App. 1995). While a traditional charging decision (is there probable cause to believe a crime has been committed, and what crime is it?) is a proper exercise of prosecutorial discretion, deciding which juveniles would be placed in the class receiving the benefits of juvenile court, and which juveniles would fall under the jurisdiction of adult court, allowed for "prosecutor stereotypes, prejudices, and biases of all kinds. . ." *Mohi*, 901 P.2d at 1003.

In the same opinion, the Court of Appeals discussed a Due Process challenge to the new Direct File Statute's lack of a recall provision. The court held that "if the legislature uniformly decides to remove a certain class of persons from the category of "juvenile offender," it does not need to allow those persons a hearing on the matter. Because they have no 'right' to juvenile treatment, defendants cannot claim that their juvenile status was unconstitutionally removed by the legislature." *Mohi*, 901 P.2d at 1005.

Any offenses joined with the qualifying direct filed offense, or any offenses, including misdemeanors, arising from the same criminal episode, will go to the District Court along with the qualifying offense. Once treated as an adult, always an adult. In other words, any subsequent offenses, even misdemeanors, will be handled in district court. U.C.A. Section 78-3a-601(3)(a).

If the qualifying charge is plea bargained or the defendant is found guilty of a lesser offense, the matter still remains in district court. U.C.A. Section 78-3a-601(2). If the qualifying charge results in an acquittal, or finding of not guilty, or dismissal, the juvenile court and Division of Youth Corrections regain jurisdiction. U.C.A. Section 78-3a-601(3)(b).

Serious Youth Offenders

If a minor is 16 years of age or older and has committed any of the following "9 deadly sins" (plus one "catch-all") he will fall under the Serious Youth Offender Statute, (often called the SYO statute). The list of the "sins" consists of: 1) aggravated arson, U.C.A. Section 76-6-103; 2) aggravated assault – serious bodily injury, U.C.A. Section 76-5-103(1)(a); 3) aggravated kidnapping, U.C.A. Section 76-5-302; 4) aggravated burglary, U.C.A. Section 76-6-203; 5) aggravated robbery, U.C.A. Section 76-6-302; 6) aggravated sexual assault, U.C.A. Section 76-5-405; 7) "drive-by shooting," U.C.A. Section 76-10-508; 8) attempted aggravated murder, U.C.A. Section 76-5-202; and 9) attempted murder, U.C.A. Section 76-5-203; and the "catch-all" of: any felony committed with a dangerous weapon after having previously been convicted of committing a felony with a dangerous weapon.

KATHERINE BERNARDS-GOODMAN is a Deputy District Attorney for Salt Lake County.

Your client will most likely have been booked into the Juvenile Detention Center.² While the Utah Rules of Juvenile Procedure allow for a warrant to be issued and the minor "taken to the place designated on the warrant," it is common practice to have the juvenile stay in the Detention Center until a judge has made the determination that she should be treated as an adult. Utah Rules of Juvenile Procedure, Rule 22(b). Consequently, as you have already learned, the first hearing will be the "D.T." arraignment. Bail is not available at this point, but will become an issue if the juvenile is sent to the adult system.³

The Court shall, upon the minor's first appearance, inform the minor of the following: the charge(s) (and provide a copy); any affidavit or recorded testimony supporting the information and how to obtain them; the right to counsel; rights concerning detention, pretrial release and bail in the event the minor is bound over to stand trial as an adult; the right to remain silent and that any statements made may be used against the minor in court; and of the right to a preliminary examination and right to present evidence regarding the retention factors. The Court must also allow the minor "reasonable time to consult counsel and allow the minor to contact any attorney by any reasonable

means, without delay and without fee."⁴ Utah Rules of Juvenile Procedure, Rule 22(d), (e), and (f).

A preliminary hearing will be scheduled within 10 days after the initial appearance.⁵ This time period may be extended for good cause. Utah Rules of Juvenile Procedure, Rule 22(f)(2).

It is the State's burden to proceed with the preliminary hearing proving probable cause that the crime has been committed and that the defendant committed it. U.C.A. Section 78-3a-602(3)(a) and Utah Rules of Juvenile Procedure, Rule 22(g). The preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. Utah Rules of Juvenile Procedure, Rule 22(g). Utah Rules of Juvenile Procedure 22(l) and (m) specifically mention the right to exclusion of witnesses, excluding spectators from the courtroom, and compulsory processes to obtain witnesses' attendance.

If proceeding under the "catch-all" provision, the State has the additional burden of proving by a preponderance of the evidence that the defendant has been previously adjudicated delinquent of an offense involving a dangerous weapon. U.C.A. Section 78-3a-602(3)(a).

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If the Court does not find probable cause, the Court shall dismiss the information and discharge the minor. Utah Rules of Juvenile Procedure, Rule 22(k). If the State falls short of its probable cause burden, showing probable cause for a lesser crime, the Court will order the defendant held for trial as a minor. U.C.A. Section 78-3a-602(4). If the State meets its burden of probable cause, the judge will bind over the defendant to stand trial, *unless* the defendant can prove, by clear and convincing evidence that all three "retention factors" exist.⁶ U.C.A. Section 78-3a-602(3)(c). The retention factor portion of the hearing is generally held immediately after the probable cause hearing.

The retention factors are: 1) the minor has not been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;⁷ 2) if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants (i.e., a party to the offense); and 3) the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner (e.g., the party to the offense who is just the driver of the get-away vehicle). Utah Code Annotated Section 78-3a-602(3)(b).⁸

As stated above, the retention factors must be proven by the defendant. The court must find, by clear and convincing evidence, all three of the factors in order to retain a minor in the juvenile system.

Shifting the burden of proving retention factors to the defendant has survived appeal to the Utah Court of Appeals under a due process challenge. *State v. AB*, 936 P.2d 1091. The Court held that it did not offend a fundamental right, again using the rationale that a juvenile has no right to treatment in the juvenile system or to be specially treated as a juvenile delinquent instead of a criminal offender. The Court also held that it did not violate the right against self-incrimination to require the defendant to prove retention factors. "[T]he right against self-incrimination protects accused persons from compelled self-incrimination, not from hard choices." *AB*, 936 P.2d at 1100. The Court pointed out that other evidence, besides the defendant's testimony, can be used to prove retention factors.

The Serious Youth Offender Statute also survived a challenge under the uniform operations of laws in *AB*. The Court found that even if there is disparate treatment between the classes of juveniles (those benefiting from staying in the Juvenile system and those treated as adults) the legislature's reasonable objectives warrant the disparity. The Court declined to look into legislative discussions finding that the plain language of the

Serious Youth Offender Statute demonstrated the legislature's intent to remove rehabilitative prospects from the juvenile court's decision and to transfer a majority of serious youth offenders to the criminal system. *AB*, 936 P.2d at 1097.

If probable cause has been found and the defendant is unable to prove the retention factors, she is then sent to the adult system. A new warrant can be issued to either place the defendant in jail, or transfer her from detention to jail. U.C.A. Section 78-3a-603(5) and Utah Rules of Juvenile Procedure, Rule 23A(f)(1). Bail, according to Title 77, Chapter 20 is then discussed. The Court may also order the minor to be held in a detention center or released in accordance with Utah Rules of Juvenile Procedure, Rule 9.⁹ Utah Rules of Juvenile Procedure, Rule 23(f)(1). There will not be a preliminary hearing in district court. U.C.A. Section 78-3a-602(8).

Offenses from the same criminal episode as the qualifying offense and any subsequent offenses shall be considered together, and where the Court finds probable cause, the defendant shall also be bound over to answer for those charges. U.C.A. Section 78-3a-602(7). As with direct file cases, once an adult, forever an adult. All subsequent charges are filed in the adult system.

Certification

Certification can be sought on a minor 14 years of age or older who has committed any felony. Under this statute you will find the state charging juveniles over 16 who allegedly committed a felony that isn't on the "9 deadly sins + 1" list qualifying them as a SYO but whom the State still wants in the adult system,¹⁰ or juveniles under the age of 16 whom the State wants in the adult system.¹¹

The first hearing is the detention arraignment. As mentioned earlier, the juvenile has a right to a preliminary hearing within 10 days. The State must prove probable cause that a crime was committed and that the defendant did it,¹²⁻¹³ then, by a preponderance of evidence, the State must show that it would be contrary to the best interest of the minor *or*¹⁴ of the public for the juvenile court to retain jurisdiction. U.C.A. Section 78-3a-603(1) and (2), and Utah Rules of Juvenile Procedure, Rule 23 (2).

The Certification Statute provides 10 factors for the court to consider in determining the best interest analysis. The factors are:

- "(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;
- (b) whether the alleged offense was committed by the minor in concert with two or more persons under circumstances which would subject the minor to enhanced

- penalties under Section 76-3-203.1 were he an adult;
- (c) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 78-8-418;¹⁵
- (e) the maturity of the minor as determined by considerations of his home, environment, emotional attitude, and pattern of living;¹⁶
- (f) the record and previous history of the minor;
- (g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;
- (h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;
- (i) whether the minor used a firearm in the commission of an offense; and
- (j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5."

U.C.A. Section 78-3a-603(3).

The tricky part of these factors is that it is discretionary with the Court to weigh these factors however it wishes. U.C.A. Section 78-3a-603(4). The State may have 9 out of 10 factors in its pocket, yet the Court may decide to assign greater weight to the lone factor favoring the defense and rule against certification. In my experience, the Court weighs the rehabilitative aspect of these factors heavily in favor of the defendant. If she is amenable to treatment and has not exhausted rehabilitative efforts in the juvenile system, the scale is tipped heavily in the defendant's favor. If the crime is particularly heinous, or the record is particularly lengthy, this can weigh heavily in favor of the state.

While the State has the burden of presenting evidence on these factors, the defendant may testify under oath, call witnesses, cross-examine adverse witnesses and present evidence on the factors as well. U.C.A. Section 78-3a-603(6) and Utah Rules of Juvenile Procedure, Rule 23(b)(2).

The Court will make its determination based on the evidence, and on a report prepared by the probation department. The probation department will include the minor's delinquency history, the minor's response to rehabilitative and correction

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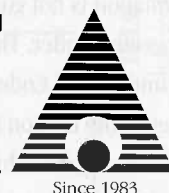
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efforts, the minor's educational history, social history and status, a psychological evaluation and assessment, and any other matter ordered by the Court.¹⁷ Utah Rules of Juvenile Procedure, Rule 23(a)(1) and (2).

The defense is entitled to a copy of the report as "early as feasible" but in any case 48 hours prior to the hearing. Utah Rules of Juvenile Procedure, Rule 23(a)(3). The Rules of Evidence govern any other materials relating to the minor's mental, physical, educational and social history. Utah Rules of Juvenile Procedure, Rule 23(a)(3). At the request of a party, the person preparing the report or materials will be present for direct and cross examination. Utah Rules of Juvenile Procedure, Rule 23(a)(3).

The Court is required to make findings on each factor for which evidence is presented. Utah Rules of Juvenile Procedure, Rule 23(c). If the Court grants certification and waives its jurisdiction, (in other words, finding that it is contrary to the best interests of the public or the minor to retain jurisdiction) the Court shall enter an order directing the minor to answer the charges in district court. This is a final, appealable order. *State v. Atcheson*, 575 P.2d 181 (Utah 1978).¹⁸

Bail can then be addressed in accordance with U.C.A. Section 77-20. The Court may order the minor committed to jail in accordance with U.C.A. Section 62A-7-201. The Court may also order the juvenile held in detention or released. Utah Rules of Juvenile Procedure, Rule 23(d). In my experience, the juvenile is transferred to jail after bail is set in the juvenile proceeding. You then get a district court arraignment date.

If the Court finds probable cause,¹⁹ but does not find that it would be contrary to the best interest of the minor or the public for the Court to retain jurisdiction, the Court will proceed upon the information as if it were a juvenile petition. You'll be looking at a trial date in juvenile court. The juvenile court may also regain jurisdiction where there is an acquittal, a finding of not guilty, or dismissal of the charges in the adult system.

Conclusion

I have seen, on more than one occasion, defense attorneys, at the close of the probable cause hearing in juvenile court, proceed to argue certification factors, when it is a SYO case. The information is not going to specify which type of case the State is proceeding under. There should be a motion to waive jurisdiction under Utah Code Annotated 78-3a-603 (certification) however, the motion is usually short and doesn't elaborate the State's theory, i.e. which factors the State intends to emphasize.²⁰ Hopefully, the above information will help you be prepared for

the correct hearing and what should be addressed at that hearing.

¹"Secure Facility" is defined in U.C.A. Section 62A-7-101. In Third District it consists of Decker Lake and Wasatch Youth.

²The Utah Rules of Juvenile Procedure do allow for the issuance of a summons. Utah Rules of Juvenile Procedure, Rule 2(c). If it appears that the minor will appear and that there is no substantial danger of a breach of the peace, or injury to persons or property, or danger to the community, a summons may be issued in lieu of a warrant. It is the S.L. District Attorney's Office's regular practice to request warrants on all serious youth cases.

³Denial of bail prior to bindover has been upheld by the Utah Supreme Court in *State v. M.L.G.*, 933 P.2d 380 (Utah 1997).

⁴The Certification Statute in 78-3a-603(9) mentions 78-3a-913 which deals with rights to appointment of counsel.

⁵Different rules apply to a juvenile who has been indicted. Those rules are not discussed in this article. See Utah Rules of Juvenile Procedure, Rule 22(f)(3).

⁶See also: "Throwing Out the Baby With the Bathwater: Utah's Serious Youth Offender Statute," *Utah Law Review*, Volume 1998, Number 3, Pg. 443, Paul R. Rudolf.

⁷Obviously, if your client has been charged under the "catch-all" of the felony with a weapon and prior felony with a weapon, you're not going to prove this retention factor.

⁸The retention factors were found not to be void for vagueness in *A.B.* at 1101-02. The Utah Court of Appeals further discussed the "violent and aggressive" retention factor in *State v. Z.R.S.*, 951 P.2d 1114 (Ut. Ct. App., 1998) finding that the Court should not engage in a balancing test to determine whether the aggressiveness was enough to warrant adult treatment. Rather the defendant must prove that his actions were not aggressive, violent or premeditated.

⁹Generally, the detention facility is eager to get rid of a juvenile who has been classified as an adult. Release is not likely if the defendant has been held up until this point. Transfer to jail is the norm.

¹⁰You may have noted that some very serious crimes are not on the SYO list, i.e. rape, sodomy, child abuse, elder abuse, manslaughter, aggravated sexual abuse of a child . . . I could go on. Also, prosecutors begin to tire of seeing the same faces — habitual juvenile offenders tend to find themselves swept into this statute.

¹¹Although they may have committed one of the "9 + 1 deadly sins," they're just not old enough for the SYO statute. Or, they committed another serious crime and/or have a bad record.

¹²As with the Serious Youth Offender Statute, this is your preliminary hearing. There will be no preliminary hearing in district court. U.C.A. Section 78-3a-603(10).

¹³Preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court, as with SYO. Utah Rules of Juvenile Procedure, Rule 22(g)-(m).

¹⁴A finding that it would be contrary to the best interest of only the public for the juvenile court to retain jurisdiction is sufficient to support a certification. There does not also need to be a finding that it is in the best interest of the juvenile. *State, In re Schreuder*, 649 P.2d 19 (Utah 1982).

¹⁵U.C.A. Section 76-8-418 is damaging a jail or other place of confinement.

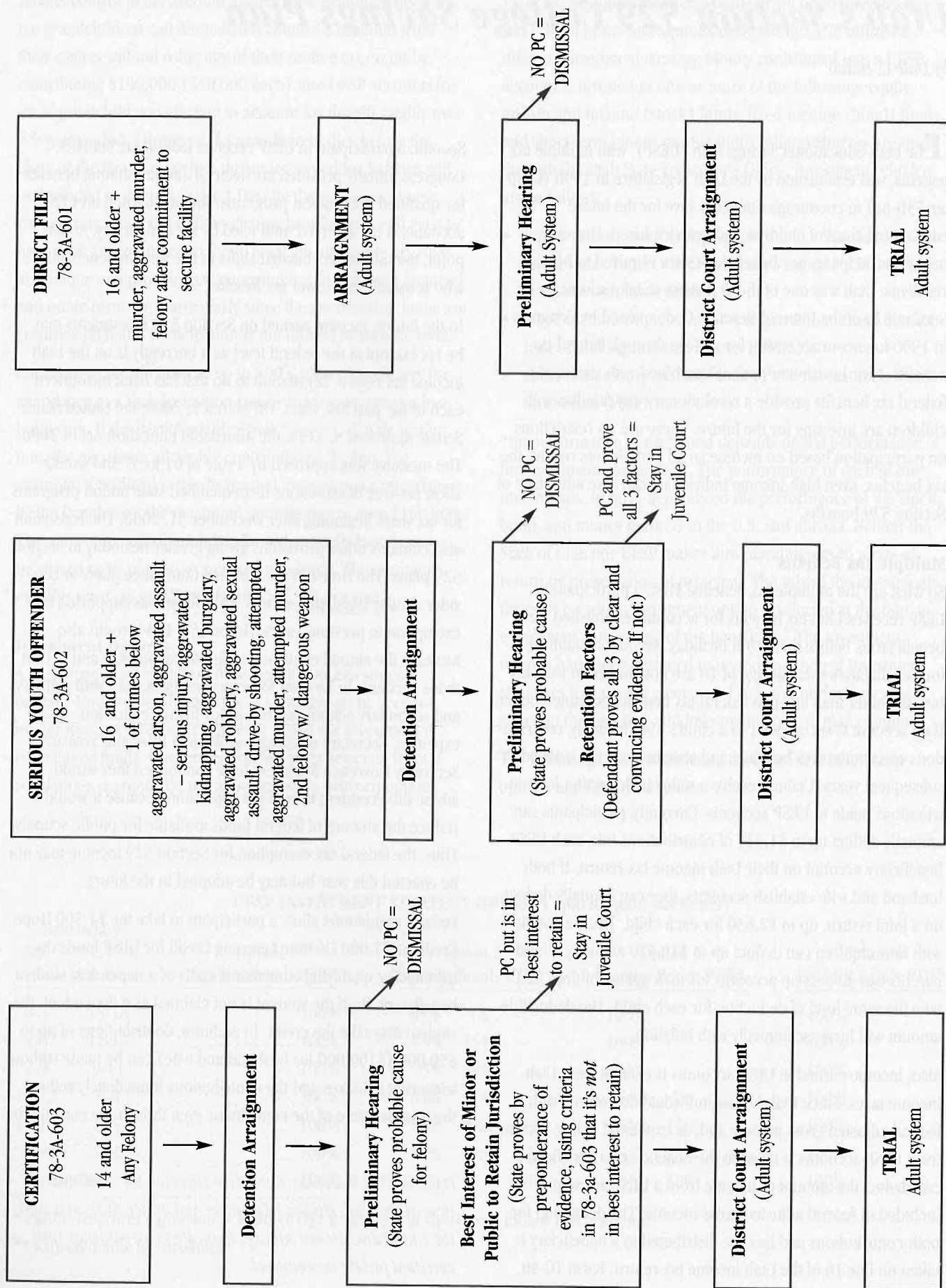
¹⁶The focus here is often on criminal sophistication of the defendant, i.e. gang involvement.

¹⁷If you want something looked into, ask the Court to order probation to include it in their report. It will be up to the judge to determine if that is best done by probation or a matter that the defendant should handle on his own as part of his defense.

¹⁸*Atcheson* also held that a certification hearing was not for the purpose of determining probable cause. This is no longer good law. The statute used to require a finding of only a "nexus" between the defendant and the crime. The statute now requires a preliminary hearing prior to addressing the best interest factors.

¹⁹If the court does not find probable cause, the case will be dismissed. Utah Rules of Juvenile Procedure, Rule 22(k).

²⁰Utah Rules of Juvenile Procedure, Rule 23(a)(1).



Utah's Section 529 College Savings Plan

by Dale C. Hatch

The Utah Educational Savings Plan (UESP), with multiple tax benefits, was established by the Utah Legislature in 1996 (Chapter 53B-8a) to encourage Utahns to save for the future educational costs of children and grandchildren. However, neither participants nor beneficiaries are required to be Utah residents. Utah was one of the first states to take advantage of Section 529 of the Internal Revenue Code, passed by Congress in 1996 to encourage saving for college through federal tax benefits. Four investment options combined with state and federal tax benefits provide a revolutionary way families with children are investing for the future. There are no restrictions on participation based on income so all participants receive the tax benefits. Even high-income individuals can take advantage of Section 529 benefits.

Multiple Tax Benefits

So what are the multiple tax benefits? First, a participant in UESP receives Utah tax benefits for accounts established for beneficiaries before their 19th birthday. Accounts established for beneficiaries over the age of 18 are not entitled to Utah tax benefits other than through federal tax benefits explained below. If an account is set up prior to a child's 19th birthday, contributions can continue to be made and state tax benefits realized in subsequent years. Utahns receive a state tax deduction for contributions made to UESP accounts. Currently, participants can annually deduct up to \$1,315 of contributions into each UESP beneficiary account on their Utah income tax return. If both husband and wife establish accounts, they can annually deduct, on a joint return, up to \$2,630 for each child. Thus, a couple with four children can deduct up to \$10,520 annually. Grandparents can also set up accounts for their grandchildren and take the same level of deduction for each child. The deductible amount will increase annually with inflation.

Also, income earned in UESP accounts is exempt from Utah income taxes. Since Utah begins individual tax returns with federal adjusted gross income and, as explained below, income from UESP accounts is taxed to the beneficiary, a beneficiary can deduct the amount of income from a UESP account included in federal adjusted gross income. The deduction for both contributions and income distributed to a beneficiary is taken on line 16 of the Utah income tax return, Form TC-40.

Second, a participant in UESP receives federal tax benefits. Congress initially provided tax deferral and tax shifting benefits for qualified state tuition programs. Income earned on UESP accounts is tax deferred until used by the beneficiary. At that point, the income tax burden shifts to the student beneficiary who is usually in a lower tax bracket.

In the future, income earned on Section 529 investments may be tax exempt at the federal level as it currently is on the Utah income tax return. Legislation to do that has been introduced each of the past few years. On March 2, 2000, the United States Senate approved S. 1134, the Affordable Education Act of 2000. The measure was approved by a vote of 61 to 37 and would allow tax-free distributions from qualified state tuition programs for tax years beginning after December 31, 2000. The legislation also contains other provisions giving greater flexibility to Section 529 plans. The House Ways & Means Committee plans to consider similar legislation shortly. The House has supported tax exemption in previous years. However, S.1134 would also increase the annual contribution to Education IRAs and permit those accounts to be used for expenses associated with primary and secondary schools as well as for higher education expenses. Secretary of Education William Riley and Treasury Secretary Lawrence Summers have announced they would advise the President to veto the legislation because it would reduce the amount of federal funds available for public schools. Thus, the federal tax exemption for Section 529 income may not be enacted this year but may be adopted in the future.

Federal regulations allow a participant to take the \$1,500 Hope Credit or \$1,000 Lifetime Learning Credit for UESP funds distributed for qualifying educational costs of a dependent student beneficiary. Or, if the student is not claimed as a dependent, the student may take the credit. In addition, contributions of up to \$50,000 (\$100,000 for husband and wife) can be made without triggering gift taxes and the contributions immediately reduce the taxable estate of the contributor even though the contributor

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retains control of the account assets. Thus, grandparents with ten grandchildren can immediately remove \$1 million from their estates without using any of their unified tax credit by contributing \$100,000 (\$50,000 each) into UESP accounts for each grandchild and electing to account for the gift ratably over a 5-year period. (However, if a grandparent dies before the close of the five-year period, the unaccounted for balance will be included in donor's estate.) Despite the gift tax treatment, participants retain the right to change beneficiaries and even to have the funds refunded to them. Such gift and estate tax rules are unique and provide new opportunities for effective financial and estate planning, particularly since the contribution limits are relatively high and participation is not limited by income level.

Cumulative contributions of up to \$90,630 per beneficiary for attendance at a Utah institution can be made over time or in a lump sum. If the participant designates an out-of-state institution, the maximum allowable contribution is higher. For example, if Stanford is the designated institution for attendance by the beneficiary, the maximum contribution is over \$160,000. The maximum contribution is adjusted annually based on the increased costs of post-secondary attendance. The minimum monthly payment is \$25 per family or \$300 per year.

Investment Options

A participant may initially choose one of four investment options. Under federal regulations, a participant or account holder may not directly or indirectly direct the investment of contributed funds. Once an option has been selected, federal regulations currently do not allow transfers between options

(S.1134, mentioned earlier, would permit up to three transfers). Each of the four options designed by UESP utilizes a different investment strategy. Money contributed into a UESP account is invested in one or more of the following: equity growth and income (stock) funds, fixed-income (bond) funds, and short-term money market funds. All investments are made through the Utah State Treasurer's Office. Investment vehicles are as follows:

- Equity growth and income (stock) funds - Vanguard Institutional Index Fund (VINX) (basically Vanguard's 500 Index Fund but with lower fees)
- Fixed-income (bond) funds - Vanguard Total Bond Market Index Fund Institutional Shares (VBIX)
- Short-term money market funds - Public Treasurer's Investment Fund (PTIF)

The performance of each fund depends on the performance of the investments in the fund. The performance of each of the investments, in turn, depends on the performance of the stock, bond, and money markets in the U.S. and abroad. Neither the State of Utah nor UESP makes any guarantees as to a rate of return or preservation of principal. The mix of the investments depends on which investment option is selected at the time of enrollment and the age of the beneficiary. The investment options have been designed to provide a range of investment strategies to meet the elements of risk and performance best suited to the situation and investment goals of many families.

The following charts summarize the four UESP investment options and historical returns.

UESP INVESTMENT STRATEGY OPTIONS (participant accounts)

Beneficiary Age **E.T.T.E. (in years)		Option 1 Equities Bonds PTIF*			Option 2 Equities Bonds PTIF*			Option 3 Equities Bonds PTIF*			Option 4 Equities Bonds PTIF*		
0-3	15-18			100%	95%	5%		100%			100%		
4-6	12-14			100%	85%	15%		100%			100%		
7-9	9-11			100%	75%	25%		100%			100%		
10-12	6-8			100%	65%	35%		95%	5%		100%		
13-15	3-5			100%	50%	40%	10%	85%	15%		100%		
16+	0-2			100%	25%	50%	25%	75%	25%		100%		
Enrolled				100%			100%	65%	35%		100%		

* Public Treasurer's Investment Fund (PTIF) is invested in short-term money market funds

** Expected time to enrollment

Historical Average Annual Returns (as of 6/30/1999):

(Historical average annual returns and yields are net of Vanguard fees and are based on past results and are not an indication of future performance.)

	<u>One Year</u>	<u>Five Year</u>	<u>Ten Year</u>
Short-term money market funds			
PUBLIC TREASURER'S INVESTMENT FUND (PTIF)	5.32%	5.52%	5.76%
Fixed income (bond) funds			
VANGUARD TOTAL BOND MARKET INDEX FUND	3.09%	7.81%	8.06%
Equity growth and income (stock) funds			
VANGUARD INSTITUTIONAL INDEX FUND	22.93%	27.94%	19.28%*

* Average annual return since fund inception - 7/31/1990

In addition to the above, earnings from an endowment fund are used to augment the earnings of participant accounts in Option 1, provided account funds are used for qualified educational costs. Last year, the endowment earnings added approximately an additional 1% return for Option 1 accounts.

No fees are charged for participation in Option 1. There are fees assessed for participation in Options 2, 3, and 4. Although there is an enrollment fee of \$50, few participants are required to pay the fee because it is waived if the participant selects direct deposit or annual payment of contributions or makes a lump-sum payment of at least \$5,000. There is an administrative charge for Options 2, 3, and 4, consisting of two parts; (1) an annual administrative charge of \$25 for each account which is reduced for accounts with balances less than \$5,000 (0.5% of the account balance), and (2) an annual charge of 0.31% of the account balance invested in stocks and 0.35% of funds invested in bonds. Those fees include Vanguard's charges and are assessed on a quarterly basis. The Vanguard charges are lower than an individual could obtain because of the institutional designation received by the Utah State Treasurer.

Currently, the U.S. Department of Education directs that savings accounts like UESP's be treated as assets of the contributor (account owner) for federal financial aid purposes. Thus, if the contributing participant is not a parent (i.e., a grandparent), the account will not affect financial aid of the beneficiary at all. If the participant is a parent, the account will be a "parental asset" and will only impact financial aid if UESP account balances and other cash, savings, checking, and other real estate and business investments exceed an "asset protection allowance." Such allowance varies based on whether there is one parent or two and based on the age of the older parent. For example, the allowance for two parents with the oldest being 45 exceeds \$40,000 and increases with age. If assets exceed the allowance, 12% of the excess will be deemed available in calcu-

lating the expected family contribution and may reduce the amount of need-based financial aid awarded to the beneficiary. However, availability of need-based grant funds typically is much less than total need so in many cases availability of savings plan funds reduces the amount of loans needed.

Flexibility

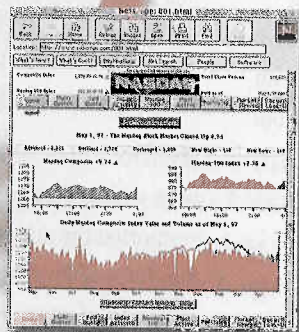
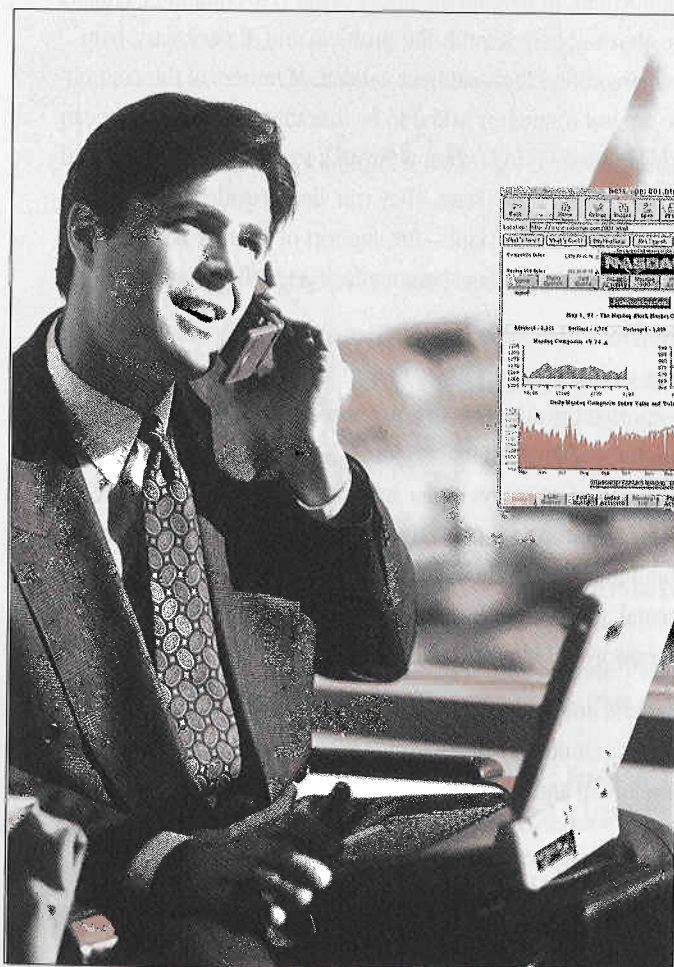
Funds saved through UESP can be used for tuition, fees, room, board, books, supplies, and equipment at any two-year or four-year public or regionally accredited private college or university, any Utah applied technology center or any proprietary school specifically approved by the Utah Higher Assistance Authority Board of Directors, the governing board of UESP. Investments can be transferred to another family member free of charge. Also, investment in UESP can assure resident status at Utah institutions even if the participant and family move from Utah. If a participation agreement remains in place for eight consecutive years with the same beneficiary, and that beneficiary is simultaneously a resident of Utah for the full eight years, the participation agreement becomes vested. A young person who is the beneficiary of a vested participation agreement will be considered a Utah resident for tuition purposes, regardless of whether he/she has since moved away from Utah.

As noted earlier, the contributor retains control over the account. Thus, a participant can withdraw from UESP and receive his/her money back. However, in most cases the Internal Revenue Service requires that there be a penalty assessed. If the participation agreement has been in place for less than two years, the penalty will equal the full income credited to the participant's account. If the agreement has been in place for two years or more, the penalty will be 10% of the investment income credited to the participant's account. No penalty is charged if the withdrawal is due to the death or disability of a beneficiary or rollover distribution to another qualifying benefi-

ciary. Also, no penalty is charged if the beneficiary receives a scholarship or allowance payment described in section 135(d) of the Internal Revenue Code to the extent of the amount of the scholarship or allowance. All refunds will be reported to the appropriate taxing authorities in the year they are made and may trigger tax liability.

What other investment program allows investment of up to \$160,000 in a professionally-managed tax-deferred account for each child without regard to income level or age? What other investment mechanism provides Utah state tax deductions for contributions and income generated free of Utah income tax? What other program allows each parent or grandparent to immediately reduce his or her taxable estate by \$50,000 per child or grandchild without giving up control of the assets and without gift tax? A qualified state tuition program under Section 529 is, simply stated, probably the best place to save significant amounts of money for families with school-age children or grandchildren. No matter what the circumstances of a family might be, college savings goals can be accommodated in simple, flexible and tax-efficient ways through a college savings plan.

The Utah Educational Savings Plan (UESP) is Utah's Section 529 college savings plan which attorneys should consider in meeting the educational, investment, and estate planning needs of their clients. Attorneys may also want to invest for their own children or grandchildren. What could provide a higher return than investing in your child's future? As Thomas G. Mortensen, publisher of Postsecondary Education Opportunity, stated: "About the only thing more expensive than going to college is not going to college." If you have further questions, check out the UESP web site at: www.uesp.org or call 1.800.418.2551 or my direct line at 801.321.7251. An enrollment kit, brochure and fact book will be sent upon request.



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Lawyers Helping Lawyers

by Mike Bulson, Committee Member

“We’ve been talking about you and your ‘drinking problem’ at Management Committee meetings lately.” With this line, a Florida attorney in a recent issue of the *Florida Bar Journal* describes his shocking encounter with his law partners that started him on the road to recovery. He describes his shock, his initial denial and then his disbelief that his partners were willing to support him in seeking help. Fortunately for this Florida attorney, help was available through Florida Lawyers Assistance, a voluntary group of lawyers dedicated to helping attorneys who run into trouble with substance abuse.

The opening line spoken to the Florida attorney could have been spoken as well by Utah lawyers. Members of Lawyers Helping Lawyers, the Utah counterpart to the Florida program, hear on a regular basis from law partners, judges and family members, concerned that an attorney needs help with substance abuse, depression or other impairment. Fortunately, there is excellent professional help available and a group of attorneys who are willing to help.

The practice of law is a helping profession. Public perception notwithstanding, most attorneys take genuine satisfaction in helping people; oftentimes, they enter the profession for that reason. But it should not come as a surprise to learn that there is also a sizable number of attorneys who need help; not help with handling a complex case but something for which no law school training or experience is available: the difficult challenge of a personal crisis involving substance abuse, mental illness or stress.

That a portion of the Bar population suffers from problems with alcohol, drugs or mental health issues is not news to most practicing attorneys. Indeed, the American Bar Association has estimated that the substance abuse rate among attorneys is at 15-18 percent, while as much as 12 percent of the attorney population suffers from serious depression. These difficulties have an impact on attorney practice. The ABA estimates at least 50 percent of all grievance and malpractice claims involve substance abuse.

The Utah experience is apparently similar. This past year, LHL began a renewed effort to reach out to members of the Bar who might be experiencing a personal crisis affecting their legal practice. To get some sense of the extent of the problem in Utah, a survey was conducted this past summer which produced

some interesting results. The survey was mailed to 5,325 active/inactive in-state attorneys and 1,488 responses were received. Of those surveyed, 83 percent were aware during the past 10 years of a member of the profession suffering from alcohol, drug abuse, mental illness or stress. Those responding estimated the number of Utah lawyers with problems involving (a) alcohol at: 55 percent; (b) drugs: at 39 percent; (c) mental illness: at 30 percent and (d) stress: at 65 percent. Sixteen percent of the respondents reported personally having a problem with stress, substance abuse, mental illness or other personal problems during the past 10 years.

LHL takes referrals from individual attorneys, judges and the organized Bar. All referrals are assured that anything divulged will be kept in strict confidence. This commitment is important, because 26 percent of those surveyed said they would have availed themselves of this service, if their situation were kept confidential. Individual members of the LHL committee contact the attorney, help identify the problem and, if necessary, help the person find the treatment needed. Members of the committee are not trained or asked to be therapists; however, they can provide useful information regarding treatment programs available throughout the State. They can also provide what is perhaps most important – the support of another attorney committed to assisting someone facing a difficult challenge.

Given the correlation between Bar discipline issues and problems with substance abuse, mental illness and stress, LHL has supported the adoption of a proposed amendment to Rule 10 of the Rules of Professional Conduct. This modification will permit diversion of attorneys under investigation for Bar discipline to LHL, in appropriate cases. Under this program, a screening committee would identify appropriate cases for diversion when mental, physical or emotional conditions are involved and therapy would likely resolve the underlying cause of the difficulty.

The LHL committee has a number of goals for the coming year. These include: (1) developing a resource referral system; (2) developing and sponsoring continuing legal education to help

MIKE BULSON is the senior managing attorney at Utah Legal Services, Inc. in Ogden, and is a committee member of Lawyers Helping Lawyers

attorneys recognize problems and acquire knowledge about intervention resources; (3) publicizing the availability of this LHL service; and (4) establishing an independent legal foundation, with a full-time director, to assist lawyers with these personal burdens.

In the interim, the committee is committed to assist lawyers and their families who have problems that impact their lives and the quality practice of law. Rendering this confidential assistance to any member of the Bar whose professional performance is or may be impaired by mental illness, emotional distress, substance abuse or other disabling condition is the mission of the Lawyers Helping Lawyers Committee. The committee welcomes referrals and opportunities to be of service. To that end, members of the committee are available to speak at Bar or other meetings. You will have an opportunity to assist in the creation of the independent legal foundation as part of the licensing process by making a financial contribution. Feel free to contact the Bar or committee members to make arrangements or make referrals. The Bar phone number is 297-7029 and the hotline phone number is 972-3733.



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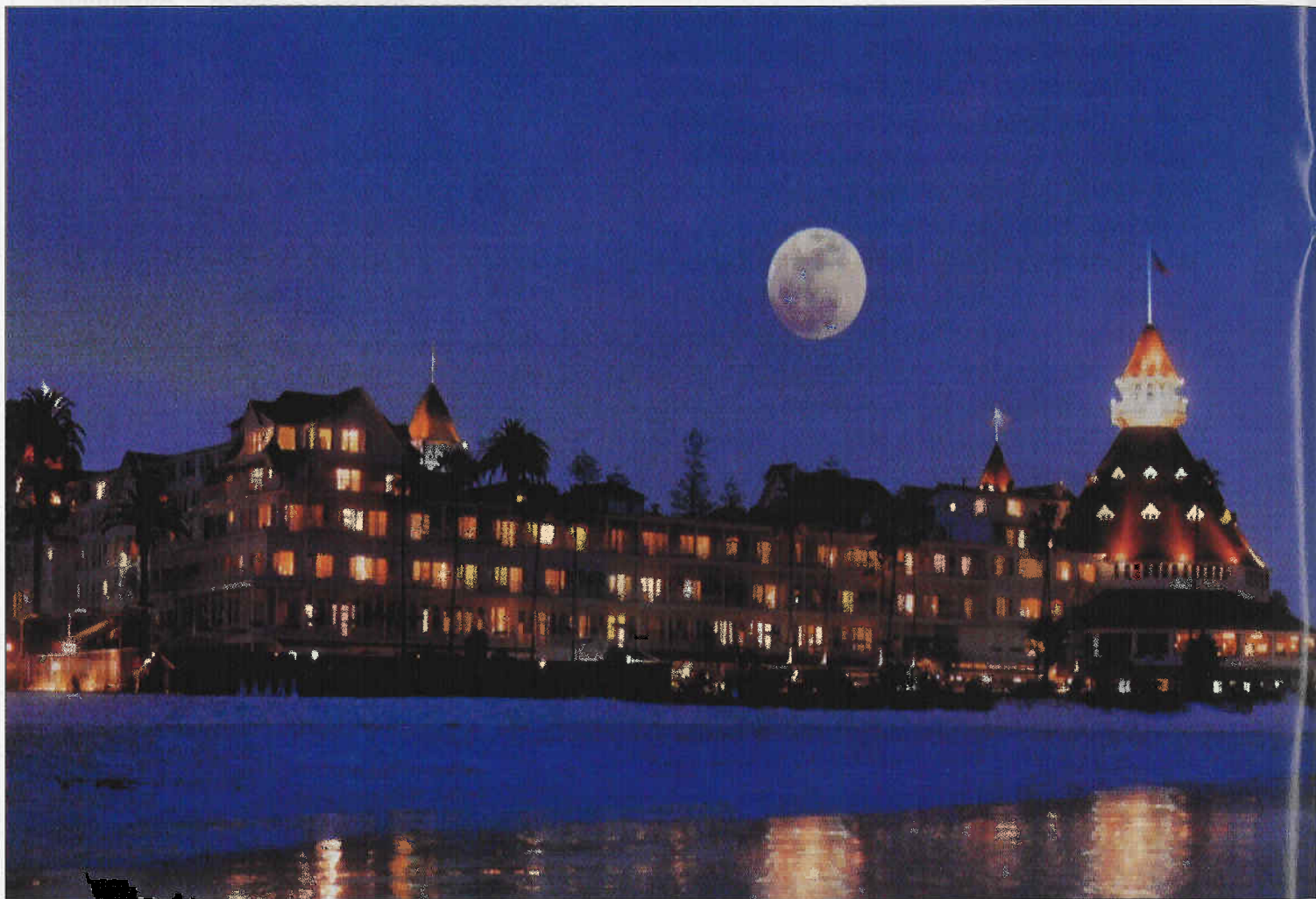
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The Crown Room, one of the Hotel del Coronado's signature restaurants, has been the site for many historical events. In 1927, Charles Lindbergh was the guest of honor at a dinner to celebrate his flight across the Atlantic. In 1970, President Richard Nixon held the first State Dinner outside Washington, D.C., for Mexican President Diaz Ordaz.

CLE Program Schedule

Wednesday, July 12, 2000

6:00 p.m. – 8:00 p.m.

Opening President's

Reception and Registration – Sun Deck

Sponsored by: PARSONS BEHLE & LATIMER
SNOW, CHRISTENSEN & MARTINEAU
WORKMAN, NYDEGGER & SEELEY
KIPP & CHRISTIAN

Thursday, July 13, 2000

7:30 a.m. – 8:00 a.m.

Registration and Continental Breakfast

Sponsored by: BALLARD, SPAHR, ANDREWS & INGERSOLL
LEBOEUF, LAMB, GREENE & MACRAE

8:00 a.m. – 9:00 a.m.

Opening General Session and Business Reports

Welcome and Opening Remarks

H. Dickson Burton, 2000 Annual Convention Program Co-Chair
Maxwell A. Miller, 200 Annual Convention Program Co-Chair

Report on the Utah State Bar

Charles R. Brown, President, Utah State Bar

Report on State Judiciary

Chief Justice Richard C. Howe, Utah Supreme Court

Report on Federal Judiciary

Chief Judge Dee V. Benson, Federal District Court, State of Utah

Report on the Utah Bar Foundation

Randy L. Dryer, President, Utah Bar Foundation

HON. ALEX KOZINSKI

Judge Kozinski was appointed United States Circuit Judge for the Ninth Circuit on November 7, 1985. He graduated from UCLA, receiving an A.B. degree in 1972, and from UCLA Law School, receiving a J.D. degree in 1975. Prior to his appointment to the appellate bench, Judge Kozinski served as Chief Judge of the United States Claims Court, 1982-85; Special Counsel, Merit Systems Protection Board, 1981-82; Assistant Counsel, Office of Counsel to the President, 1981; Deputy Legal Counsel, Office of President-Elect Reagan, 1980-81; Attorney, Covington & Burling, 1979-81; Attorney, Forry Golbert Singer & Gelles, 1977-79; Law Clerk to Chief Justice Warren E. Burger, 1976-77; and Law Clerk to Circuit Judge Anthony M. Kennedy, 1975-76.

9:00 a.m. – 9:50 a.m.

Keynote Address: Antitrust Law: Solution in Search of a Problem – (1 CLE hour)

Hon. Alex Kozinski, 9th Circuit Court

Sponsored by: PARR WADDOLPS BROWN GEE & LOVELESS

9:50 a.m. – 10:15 a.m.

Refreshment Break

Sponsored by: GIAUQUE, CROCKETT, BENDER & PETERSON
TRASK, BRITT & ROSSA
MCKAY, BURTON & THURMAN

10:15 a.m. – 11:05 a.m.

Session I – (1 CLE hour each)

LITIGATION TRACK		TRANSACTIONAL TRACK
Who Gets to Visit Your Children and Who Gets to Decide? <i>Panel of Lawyers & Judges</i>		Through the Maze: The Lawyer's Role in the Sale of Real Estate <i>Read R. Hellewell, Kirton & McConkie</i>
GENERAL PRACTICE/ GOVERNMENT TRACK Juvenile Court as a Resource to the Public and the Legal Community <i>Hon. Kimberly K. Hornak, 3rd District Juvenile Court</i> <i>Jan Thompson, Communications Director, Administrative Office of the Courts</i>	TECHNOLOGY TRACK Using the Power of Computers for Winning Courtroom Arguments <i>Francis J. Carney, Anderson & Karrenberg</i> <i>Blake D. Miller, Ballard Spahr Andrews & Ingersoll</i>	BACK TO BASICS TRACK NLCLE: Intellectual Property for the Non-Specialist <i>Jonathan W. Richards, Workman, Nydegger & Seeley</i>

11:05 a.m. – 11:20 a.m.

Refreshment Break

Sponsored by: BURBIDGE & MITCHELL

WILLIAMS & HUNT

11:20 a.m. – 12:10 p.m.

Session II – (1 CLE hour each)

LITIGATION TRACK		TRANSACTIONAL TRACK
Successful Strategies for Advocates in Mediation <i>Ralph L. Dewsnup, Dewsnup, King & Olsen</i> <i>James R. Holbrook, Callister, Nebeker & McCullough</i> <i>Larry R. Keller, Keller & Lundgren</i> <i>John R. Lund, Snow, Christensen & Martineau</i> <i>D. Frank Wilkins, Berman, Gaufin, Tomsic, Savage & Campbell</i>		NLCLE: Primer I – Foreclosures <i>Larry G. Moore, Ray, Quinney & Nebeker</i>
GENERAL PRACTICE/ GOVERNMENT TRACK ETHICS: The Market vs. Lawyers – The MDP Task Force Report <i>Michael D. Blackburn, MDP Task Force Co-Chair</i> <i>Ray O. Westergard, MDP Task Force Co-Chair</i>	TECHNOLOGY TRACK Commercial Transactions <i>John R. Morris, Snell & Wilmer</i>	LEGAL ASSISTANT TRACK NLCLE: Primer I – Foreclosures <i>Larry G. Moore, Ray, Quinney & Nebeker</i>

12:10 p.m. – 12:30 p.m.

Refreshment Break

Sponsored by: STOEL RIVES LLP

GREEN & BERRY

12:30 p.m. – 1:20 p.m.

Session III – (1 CLE hour each)

LITIGATION TRACK		TRANSACTIONAL TRACK
NLCLE: What to Do When Your Client Calls From Jail – The Basics of Criminal Practice for Civil Lawyers <i>Gregory K. Skordas, Gustin, Christian, Skordas & Caston</i>		ENREL: Development of Environmentally Impaired Properties <i>David W. Tundermann, Parsons Beble & Latimer</i> <i>J. Michael Baily, Parsons Beble & Latimer</i> <i>Hal J. Pos, Parsons Beble & Latimer</i>
GENERAL PRACTICE/ GOVERNMENT TRACK “Miranda” <i>Prof. Paul Cassell, University of Utah College of Law</i> <i>Steven C. Clark, ACLU of Utah</i>	TECHNOLOGY TRACK Intellectual Property Issues on the Internet <i>H. Dickson Burton, Trask, Britt & Rossa</i> <i>John R. Morris, Snell & Wilmer</i> <i>Gregory D. Phillips, Howard, Phillips & Andersen</i> <i>Jonathan W. Richards, Workman, Nydegger & Selley</i> <i>John C. Stringham, Workman, Nydegger & Seeley</i>	LEGAL ASSISTANT TRACK NLCLE: What to Do When Your Client Calls From Jail – The Basics of Criminal Practice for Civil Lawyers <i>Gregory K. Skordas, Gustin, Christian, Skordas & Caston</i>

1:20 p.m.

Meetings Adjourn for the Day

Friday, July 14, 2000

7:30 a.m. – 8:15 a.m.

Section Breakfasts

8:00 a.m. – 8:30 a.m.

Registration and Continental Breakfast

Sponsored by: HOLME ROBERTS & OWEN

RAY, QUINNEY & NEBEKER

8:30 a.m. – 9:15 a.m.

General Session

Presentation of Annual Awards

Charles R. Brown, President, Utah State Bar

Swearing in of New Bar Commissioners and President-Elect

Chief Justice Richard C. Howe, Utah Supreme Court

9:15 a.m. – 10:05 a.m.

General Session – Seize the Future: A View of the Future of the Legal Profession – (1 CLE hour)

William C. Cobb, WCCI, Inc.

Sponsored by: DURHAM, JONES & PINEGAR

10:05 a.m. – 10:15 a.m.

Refreshment Break

Sponsored by: STRONG & HANNI

SNELL & WILMER

10:15 a.m. – 11:05 a.m.

Session I – (1 CLE hour each)

LITIGATION TRACK		TRANSACTIONAL TRACK	
Killer Cross-Examination <i>Larry Pozner, Hoffman, Reilly, Pozner & Williamson</i> Sponsored by: THE LITIGATION SECTION, UTAH STATE BAR		Recent Developments & Future Trends Under the American With Disabilities Act <i>Scott A. Hagen, Ray, Quinney & Nebeker</i>	
GENERAL PRACTICE/GOVERNMENT TRACK Killer Cross-Examination <i>Larry Pozner, Hoffman, Reilly, Pozner & Williamson</i> Sponsored by: THE LITIGATION SECTION, UTAH STATE BAR	TECHNOLOGY TRACK Creating Your Future <i>William C. Cobb, WCCI, Inc.</i>	LEGAL ASSISTANT TRACK What Generation X Lawyers Know That You Don't: Trends in the Profession <i>Scott Matheson, Jr., Dean, University of Utah College of Law</i>	

11:05 a.m. – 11:20 a.m.

Refreshment Break

Sponsored by: RICHARDS BRANDT MILLER & NELSON

ROBERT J. DEBRY & ASSOCIATES

NIELSEN & SENIOR

WILLIAM C. COBB

William Cobb is the Managing Partner of the WCCI Inc. (William Cobb Consultants) based in Houston, Texas. Mr. Cobb has been a consultant in strategic issues affecting professional service organizations since 1978. He provides counsel to improve the competitive position of his clients. That counsel includes the assessment of the impact of trends in the market; pricing services and alternative billing; practice management; firm governance and structure; partner review, evaluation, and compensation; and similar subjects of critical importance to law firm and legal department leadership. Since 1992, Mr. Cobb has been chairing the Futurist Task Force for the ABA. He is a frequent speaker and writer on the critical issues of law firm and corporate legal department leadership. He is the author of *A Planning Workbook for Law Firm Management*, and *Win-Win Billing Strategies* among others.

LARRY POZNER

Larry Pozner began his career as a Public Defender. He is the Immediate Past-President of the National Association of Criminal Defense Lawyers. He is a nationally recognized legal commentator and is frequently seen on such shows as the NBC Nightly News, The Today Show, Larry King Live and MSNBC. He was the NBC Legal Analyst for the Oklahoma City bombing trials and the Jon Benet Ramsey case. Mr. Pozner is listed in The Best Lawyers in America. He served many years on the faculty of the University of Denver College of Law, where he was voted Best Professor. He is a partner in the 10 lawyer litigation firm of Hoffman, Reilly, Pozner & Williamson where he handles protracted commercial and criminal cases, as well as plaintiff defense of class actions.

11:20 a.m. – 12:10 p.m.

Session II – (1 CLE hour each)

LITIGATION TRACK		TRANSACTIONAL TRACK
Killer Cross-Examination cont.		Private Offerings of Securities – Tips for the General Practitioners <i>Gary Winger, Ray, Quinney & Nebeker</i>
GENERAL PRACTICE/ GOVERNMENT TRACK Killer Cross-Examination cont.	TECHNOLOGY TRACK E-Filing and E-Commerce for Lawyers <i>Toby Brown, Utah Electronic Law & Commerce Partnership</i> <i>Brent Israelsen, Utah Electronic Law & Commerce Partnership</i>	LEGAL ASSISTANT TRACK Hot Issues in Employment Law <i>David A. Anderson, Parsons Beble & Latimer</i>

12:10 p.m.

Meetings Adjourn for the Day

Saturday, July 15, 2000

8:30 a.m. – 9:00 a.m.

Registration and Continental Breakfast

Sponsored by: VANCOTT, BAGLEY, CORNWALL & MCCARTHY

9:00 a.m. – 9:50 a.m.

ETHICS General Session – Reel Justice: Legal Ethics in the Movies

Prof. Paul Bergman, UCLA School of Law

Sponsored by: CALLISTER, NEBEKER & MCCULLOUGH

9:50 a.m. – 10:10 a.m.

Refreshment Break

Sponsored by: CLYDE, SNOW, SESSIONS & SWENSON

10:10 a.m. – 11:00 a.m.

Session I – (1 CLE hour each)

LITIGATION TRACK		TRANSACTIONAL TRACK
Reel Justice: Trial Tactics in the Movies <i>Prof. Paul Bergman, UCLA School of Law</i>		Current End-of-Life Legal Issues <i>Mary Jan Ciccarello, Utah State Division of Aging and Adult Services</i> <i>Phil Ferguson, Chair, Needs of the Elderly Committee</i> <i>Shirley Rossa, Partnership for End of Life in Utah</i>
GENERAL PRACTICE/ GOVERNMENT TRACK Reel Justice: Trial Tactics in the Movies <i>Prof. Paul Bergman, UCLA School of Law</i>	TECHNOLOGY TRACK The Convergence of the Internet and Your Law Practice <i>H. Dickson Burton, Trask, Britt & Rossa</i> <i>Toby Brown, Utah State Bar</i> <i>D. Brent Israelsen, Fillmore, Belliston & Israelsen</i> <i>Blake D. Miller, Ballard, Spahr, Andrews & Ingersoll</i>	LEGAL ASSISTANT TRACK NLCLE: Mediation 101 <i>Karin S. Hobbs, Utah Court of Appeals</i>

11:00 a.m. – 11:10 a.m.

Refreshment Break

Sponsored by: COHNE, RAPPAPORT & SEGAL
FABIAN & GLENDENIN

11:10 a.m. – 12:00 p.m.

Session II – (1 CLE hour each)

LITIGATION TRACK Significant legislative Developments from the 2000 Legislative Session <i>John T. Nielsen, Utah State Bar Lobbyist</i>		TRANSACTIONAL TRACK ETHICS: Advocacy Gone Awry – When Does Vigorous Advocacy Overstep the Lines into Unprofessional Conduct? <i>Narda E. Beas-Nordell, Salt Lake County District Attorney's Office</i> <i>Ellen M. Maycock, Kruse, Landa & Maycock</i> <i>Carol A. Stewart, Office of Professional Conduct, Utah State Bar</i>
GENERAL PRACTICE/GOVERNMENT TRACK State Constitution Issues <i>Justice Christine M. Durham, Utah Supreme Court</i>	TECHNOLOGY TRACK The Convergence of the Internet and Your Law Practice, cont.	LEGAL ASSISTANT TRACK ETHICS: Advocacy Gone Awry – When Does Vigorous Advocacy Overstep the Lines into Unprofessional Conduct? <i>Narda E. Beas-Nordell, Salt Lake County District Attorney's Office</i> <i>Ellen M. Maycock, Kruse, Landa & Maycock</i> <i>Carol A. Stewart, Office of Professional Conduct, Utah State Bar</i>

12:00 p.m.

Breakout Session Adjourn

12:30 p.m. – 3:00 p.m.

Salt Lake County Bar Film & Discussion: "Inherit the Wind" – (2 CLE hours)

Hon. Leslie A. Lewis, 3rd District Court

Hon. Ronald E. Nebring, 3rd District Court

MANDATORY CLE CREDIT

The State Board of CLE has approved the 2000 Annual Convention for up to 12 hours of CLE credit, which includes up to 4 hours of NLCLE credit, up to 4 hours of ethics and 2 hours for the Salt Lake County Bar Film Presentation. In order to ensure that you receive Utah MCLE credit, check in at the registration desk to obtain your packet of materials and name badge. You are encouraged to keep attendance records to be submitted at the end of your reporting period. Certificates of Attendance will be available in your handout materials. Questions regarding MCLE requirements should be directed to Sydnie Kuhre, Utah State Board of CLE Administrator, Utah Law & Justice Center, (801) 297-7035.

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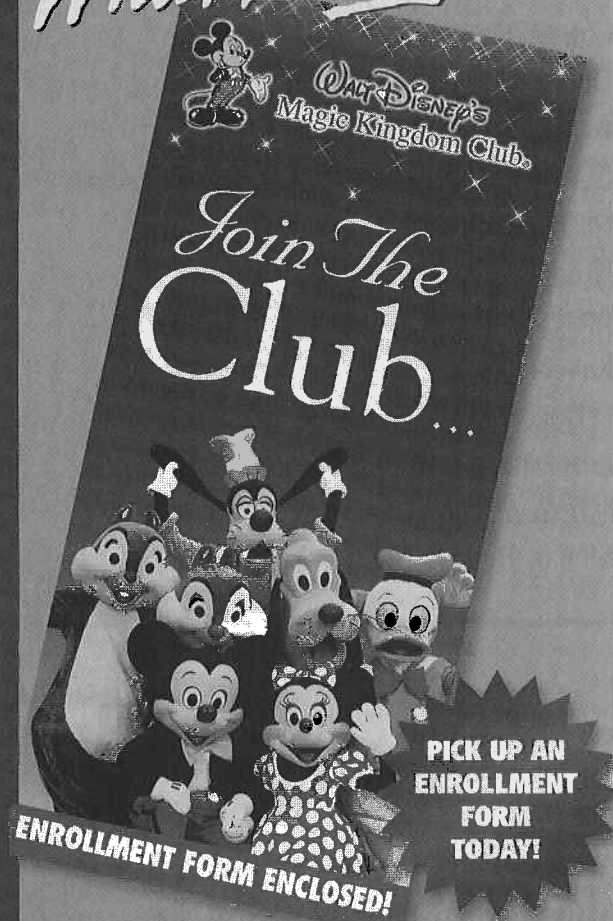
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Mailing of Licensing Forms

The licensing forms for 2000-2001 will be mailed during the last week of May and the first week of June. Fees are due July 3, 2000, however fees received or postmarked on or before August 1, 2000 will be processed without penalty.

It is the responsibility of each attorney to provide the Bar with current address information. This information must be submitted in writing. Failing to notify the Bar of an address change does not relieve an attorney from paying licensing fees, late fees, or possible suspension for non-payment of fees. You may check the Bar's web site to see what information is on file. The site is updated weekly and is located at www.utahbar.org.

If you need to update your address please submit the information to Arnold Birrell, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111-3834. You may also fax the information to (801) 531-0660.

Pro Bono

Schiess and Emmett has arranged for a law student who is currently working for the firm, Julie Walker, to accept pro bono bankruptcy cases from the Utah State Bar. This arrangement will be administered through an externship at Brigham Young University. Mark Emmett and Ronald Schiess will both be personally supervising Ms. Walker's work. We wish to thank them for their significant contribution to our pro bono effort!

Special Thanks To:

The objective of the Utah State Bar's Pro Bono Project is to provide access to pro bono legal services for low income clients in our community who would not otherwise be able to receive these legal services. The Utah State Bar would like to recognize and thank the following attorneys for their willingness to help with our pro bono project!

Jim Ausenbaugh

Deborah Badger

James Brady

Kent Corry

Les England

Jonathan Hawkins

Larry Hazen

Lynn Heward

William Holyoak

Christina Miller

George Ventura

David Wood

Steven Wright

Request for Comment on Proposed Bar Budget

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 2000 and ends June 30, 2001. The process being followed includes review by the Commission's Executive Committee and the Bar's Budget & Finance Committee, prior to adoption of the final budget by the Bar Commission at its July 12, 2000 meeting.

The Commission is interested in assuring that the process includes as much feedback by as many members as possible. A copy of the proposed budget, in its most current permutation, will be available for inspection and comment at the Law & Justice Center after May 31, 2000. You may pick up a copy from the receptionist.

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

Supreme Court Seeks Attorneys to Serve on the Utah State Board of Continuing Legal Education

The Utah Supreme Court is seeking applicants to fill five vacancies for the Utah State Board of Continuing Legal Education. Attorneys should submit a resume and letter indicating interest and qualifications to Brent M. Johnson, Utah Court of Appeals, 230 South 500 East #300, Salt Lake City, Utah 84102. Applications must be received no later than July 17, 2000. Questions regarding the vacancies may be directed to Sydnie W. Kuhre, MCLE Board Administrator at (801) 297-7035.

Summary of Utah State Bar Licensing

This information is provided to answer frequently asked questions and is accurate for the current year. There are five categories of licensure available to Utah lawyers.

Active – A lawyer who is practicing law generally and not necessarily for a fee, giving legal advice or counsel, examining or passing upon the legal effect of an act, document or law, or representing clients, not necessarily in a judicial setting, must be licensed on Active Status. You must pay the current active licensing fee plus the required annual client security fund assessment and you must satisfy continuing legal education requirements. The current annual fee is \$350.

Active, Under Three – A lawyer on Active Status who has taken the Student Bar Examination and was admitted on or after July 1, 1998 qualifies for a reduced licensing fee. (If you took the Attorney Bar Examination you do not qualify for this status.) The current licensing fee is \$190 plus the client security fund assessment. You must also satisfy the New Lawyer Continuing Legal Education requirements.

Active Emeritus – A lawyer who has been a member of the Bar for 50 years or is 75 years old as of July 1 of the current year qualifies for Emeritus Status and is not required to pay a licensing fee or the client security fund assessment. If you are practicing law while on Emeritus Status, you are considered Active Emeritus and must meet continuing legal education requirements.

Inactive – A lawyer on Inactive Status is considered to be “in good standing” but may not practice law and is not required to meet continuing legal education requirements. The annual fee is \$80. If you want to receive the *Utah Bar Journal* the fee is \$90. To be placed on Inactive Status, please indicate by paying the inactive fee when renewing through the annual licensing form or by letter. **You will not automatically receive Inactive Status by not paying the annual licensing fee. If you do not pay the licensing fee you will be suspended for non-payment.**

Inactive Emeritus – A lawyer who has been a member of the Bar for 50 years or is 75 years old as of July 1 of the current year and who wishes to be on Inactive Status is not required to pay a licensing fee, the client security fund assessment or meet continuing legal education requirements.

Reinstatement after Suspension for Non-Payment of Fees – A lawyer who has been suspended for non-payment of any fees

may be reinstated to licensure by paying the annual licensing fees for the years he or she was suspended plus the current annual licensing fee, the client security fund assessment and a \$100 reinstatement fee. You licensure fees due for the years while suspended are determined by your status at the time you were suspended for non-payment.

Resignation from the Bar – A lawyer may resign from the Bar if he or she has no disciplinary matters outstanding or pending and is not currently suspended from the practice of law. Requests to resign must be made in writing.

Readmission to the Bar after Resignation without Discipline Pending – A lawyer wishing to be readmitted after resignation without discipline pending must file a verified petition, addressed to the Bar Commission and filed with the Executive Director, identifying the lawyer's name, age, current residence and business address, the residence and occupation during the period subsequent to resignation and the reasons for resignation. The petitioner must pay a \$200 filing fee. For readmission with discipline, contact the Office of Professional Conduct.

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, 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

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(801) 297-7029

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



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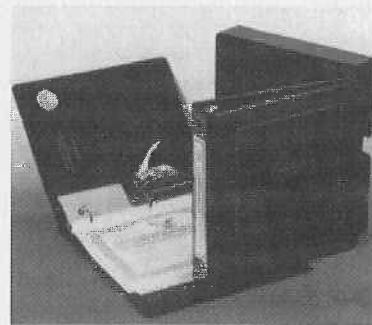
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Utah State Bar 2000 Mid-Year Meeting Awards

Dorathy Merrill Brothers Award for the Advancement of Women in the Legal Profession

Katherine D. Pullins

Katherine Pullins was a non-traditional student who received her J.D. from J. Reuben Clark Law School in 1988. She joined the law school administration in June of 1988. Although her job titles and descriptions have changed over the years from career services director to assistant dean to associate dean, Dean Pullins' central focus has been and remains the well-being of law students. This includes student counseling, tutoring and accommodations for disabilities. Her assignment in alumni relations allows her to continue her relationship with students beyond their graduation. Her academic interests include mediation and negotiation.



Although Dean Pullins has never been admitted to practice law in Utah, she has had an immeasurable effect on the lives and careers of hundreds of women law students in her various roles at the J. Reuben Clark Law School. Many of those she has influenced and helped are now successful practitioners in Utah and elsewhere. She has been an incredible support to hundreds of law students over the past eleven years. As dean of students, she deals not just with "official" problems, but with a myriad of personal crises affecting students at the law school. Each BYU law class has nearly 160 students, and during her tenure at the law school, she has literally touched the lives of approximately 1600 students in a very personal way. To each of them she is a counselor, supporter and friend. Her concern for students is sincere and heartfelt.

Ethics Advisory Opinion Committee

Opinion No. 00-01

(Approved March 9, 2000)

Issue: What are the ethical obligations of a lawyer to protect client confidentiality in the use of Internet e-mail communications?

Opinion: A lawyer may, in ordinary circumstances, use unencrypted Internet e-mail to transmit client confidential information without violating the Utah Rules of Professional Conduct.

Raymond S. Uno Award for the Advancement of Minorities in the Legal Profession

Sherrie Hayashi

Sherrie Hayashi graduated from the University of Utah College of Law and is an attorney licensed to practice in the States of Utah and California. Currently, she is Associate General Counsel of the Labor Commission. Ms. Hayashi served as the Fair Housing Coordinator for the State of Utah for more than four years, where she developed, implemented and managed a new division for the Industrial Commission of Utah for the enforcement of state and federal fair housing laws. In addition, Ms. Hayashi also served as the Texas Court Improvement Coordinator where her responsibilities included administering a federal grant for the purposes of improving the Texas court system for children who are in foster care as a result of cruelty, abuse and neglect. She has also served as an Assistant Attorney General for the State of Utah.



Ms. Hayashi currently serves in a volunteer capacity as the Executive Director of the Multi-Cultural Legal Center (MLC) and was one of the founding members of the organization. The MLC is a young nonprofit organization whose mission is to use and strengthen Utah's justice system to ensure that racial and ethnic communities receive equal treatment and access to legal services in areas of law which significantly impact racial and ethnic communities such as discrimination, immigration and hate crimes. Ms. Hayashi also serves on the Board of Trustees of the Disability Law Center and the Japanese American Citizens League and is a volunteer attorney with Utah Legal Services Streetlaw Project. She has also served on the Board of the Minority Bar Association and the Japanese American Youth Young Professionals Board and has also been a member of the Minority Law Caucus.

William W. Downes, Jr. Receives the Peter W. Billings, Sr. Outstanding Dispute Resolution Service Award for 2000

William W. Downes, Jr. was awarded the Peter W. Billings, Sr. Outstanding Dispute Resolution Service Award by the Salt Lake City office of the American Arbitration Association on Friday, April 7, 2000. The award was presented to Mr. Downes on the opening night of the Utah Council on Conflict Resolution's second annual ADR Symposium.



Downes was selected by the American Arbitration Association for his dedicated service and leadership in promoting the understanding and use of alternative dispute resolution (ADR).

Downes' service in ADR includes over 10 years of mediation experience, as well as promotion of mediation to attorneys, family therapists, judicial personnel and others, teaching and training of family mediators in Utah, and his current role as Executive Director of Utah Dispute Resolution, a corporation devoted to providing free mediation services to lower income persons in a variety of circumstances.

Diane Abegglen, Vice President of the American Arbitration Association, praised Downes for his dedicated service to the field of ADR, saying: "Today, more than ever, alternative dispute resolution has taken its place in Utah as an effective and enforceable means of resolving disputes. Increasingly, Utahns in conflict are turning to ADR to resolve their disputes short of the courthouse. Bill Downes' contributions to the field have substantially advanced the cause of ADR in our state."

The American Arbitration Association established the annual service award in 1996 to honor Peter W. Billings, Sr. and his long-standing contributions to the field of ADR. The award is given annually by the Association to the organization or individual who has done the most to further dispute resolution in an expeditious, inexpensive and fair manner.

**Law
Suit Day**

Donate your
unused suits and
professional clothing
to homeless and low
income people for
interviewing.

Drop your suits off at the State
Bar offices on Friday, May 19,
2000, all day.

Sponsored by the Young Lawyers
Division of the Utah State Bar.

Questions? Call Mark Pugsley at 323-3380
or Scott Mayeda at 524-2752

Utah Bankruptcy Lawyer's Forum

A Forum for Exchange
and Discussion of
Bankruptcy Law Issues and Practice

Year 2000 Membership: \$50.00
3 CLE Presentation, 2 hours each

MAY 16, 2000:
BANKRUPTCY LAW UPDATE
4:00-6:00 p.m.

Moss Federal Courthouse

September 12, 2000 and
December 12, 2000

Topics to be announced
For Membership or
Presentation Information Contact:

Leslie J. Randolph: (801) 359-3500

PUBLIC NOTICE for REAPPOINTMENT OF A BANKRUPTCY JUDGE

The current term of office of Glen E. Clark, United States Bankruptcy Judge for the District of Utah at Salt Lake City, is due to expire on September 29, 2000. The United States Court of Appeals for the Tenth Circuit has determined that Judge Clark appears to merit reappointment and is considering reappointing him to a new term of office, subject to public notice and opportunity for public comment.

Upon reappointment, Judge Clark would continue to exercise the jurisdiction of a bankruptcy judge as specified in Title 28, United States Code; Title 11, United States Code; and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, §§101-122, 98 Stat. 333-346. In bankruptcy cases and proceedings referred by the district court, Judge Clark would continue to perform the duties of a bank-

ruptcy judge that might include holding status conferences, conducting hearings and trials, making final determinations, entering orders and judgments, and submitting proposed findings of fact and conclusions of law to the district court.

Members of the bar and the public are invited to submit comment for consideration by the court of appeals regarding the reappointment of Bankruptcy Judge Glen E. Clark to a new term of office. **All comments will be kept confidential** and should be directed to Robert L. Hoecker, Circuit Executive, Byron White U.S. Courthouse, 1823 Stout Street, Denver, Colorado 80257.

Comments must be received no later than Friday, June 16, 2000.

Ethics Advisory Opinion Committee Seeks Applicants

The Utah State Bar is currently accepting applications to fill a vacancy on the 14-member Ethics Advisory Opinion Committee. Lawyers who have an interest in the Bar's ongoing efforts to resolve ethical issues are encouraged to apply.

The charge of the Committee is to prepare formal written opinions concerning the ethical issues that face Utah lawyers and to forward these opinions to the Board of Bar Commissions for its approval.

Because the written opinions of the Committee have major and enduring significance to the Bar and the general public, the Bar solicits the participation of lawyers and members of the judiciary who can make a significant commitment to the goals of the Committee and the Bar.

If you are interested in serving on the Ethics Advisory Opinion Committee, please submit an application with the following information, either in résumé or narrative form:

- Basic information, such as years and location of practice, type of practice (large firm, solo, corporate, government, etc.), and substantive areas of practice.
- A brief description of your interest in the Committee, including relevant experience and commitment to contribute to

well-written, well-researched opinions.

Appointments will be made to maintain a Committee that:

- Is dedicated to carrying out its responsibilities; i.e., to consider ethical questions in a timely manner and issue well-reasoned and articulate opinions.
- Involves diverse views, experience and backgrounds from the members of the practicing Bar.

If you want to contribute to this important function of the Bar, please submit a letter and résumé indicating your interest to:

Gary G. Sackett, Chairman
Ethics Advisory Opinion Committee
P.O. Box 45444
Salt Lake City, Utah 84145

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 of Change _____

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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City _____ State _____ Zip _____

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

_____ P.O. Box _____ Number _____ City _____ State _____ Zip _____

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

2,000 Attorneys in 2000

In its second year, the "and Justice for all" Campaign is well on its way to achieving its "2,000 Attorneys in 2000" goal. When 2,000 attorneys have contributed, the George S. and Dolores Doré Eccles Foundation will contribute an additional \$100,000 to the Campaign. To date, 1,250 attorneys have contributed over \$277,600 in support of this effort to ensure equal access to justice for all Utahns. To reach this ambitious goal, this year's campaign focuses on attorneys who practice in solo or small firms - the majority of lawyers in Utah. The Dr. W.C. Swanson Family Foundation will match up to \$25,000 given by solo and small firm attorneys, particularly those in Northern Utah. Funds donated support the programs of the Disability Law Center, Legal Aid Society of Salt Lake and Utah Legal Services, the major providers of free civil legal services to the poor and people with disabilities in Utah.

The "and Justice for all" Campaign would like to convey a special thanks to the Family Law Section of the Bar for its generous contribution of \$6,000, which was announced at the February kick-off. Members of the Family Law Section are among the most dedicated providers of pro bono services. The donation from the Family Law Section confirms the truism that those individuals who give the most time also make the most contributions. The Family Law Section has always supported the family law programs at Legal Aid and Legal Services, and the Campaign is grateful for the Section's current support of the united effort represented by the "and Justice for all" Campaign, and invites other Utah State Bar sections to join in support of "and Justice for all."

Individual and Firm* Supporters of "2,000 Attorneys in 2000"

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* Includes firms, not listed in the Law Firm Supporters List in the April Issue of the *Bar Journal*, that have donated since the end of March, 2000.

Corporation, Foundation & Bar Section Supporters of "2,000 Attorneys in 2000"

Central Utah Bar Association	Family Law Section	Lexis-Nexis	Quinney Foundation
Crosland Family Foundation	Intellectual Property Section	Park City Bar Association	Workers Compensation Fund

An attorney's contribution to "and Justice for all" will meet all or a portion of his or her obligation under Rule 6.1 of the Utah Rules of Professional Conduct. The suggested contribution is the dollar equivalent of two billable hours. All donations are fully

tax deductible. Checks should be made payable to "and Justice for all," 225 South, 200 East, Suite 200, Salt Lake City, Utah, 84111.

DATES	TITLE	PLACE, TIME, CLE CREDIT, PRICE
5-5-00	Annual Corporate Counsel Seminar	Law & Justice Center: 8:30 a.m.-1:00 p.m.; 4 Hrs. CLE (includes 1 hour in ethics); \$75.00/\$45 for section members. Registration and Continental Breakfast begins at 8:00 a.m.
5-11-00	Ali-Aba: Health Law Update	Law & Justice Center: 10:00 a.m.-2:00 p.m.; 4 Hrs. CLE; \$165, \$85 for government employees, \$50.00 for students. To register: 1-800-CLE-NEWS or on www.ali-aba.org .
5-12-00	Annual Family Law Update & Seminar	*Law & Justice Center; 8:30 a.m.-3:30 p.m.; 6.5 Hrs. CLE; \$120/\$110 for section members. (*Subject to change. Access additional information on the Utah Bar web site at http://www.utahbar.org/cle .)
5-17-00	Annual Labor & Employment Update & Seminar	Law & Justice Center; 8:30 a.m.-12:00 noon; 4 Hrs. CLE; \$75.00/\$65 for section members.
5-18-00	Ali-Aba: Estate Planning for Distributions from Qualified Plans & IRA's	Law & Justice Center; 10:00 a.m.-2:00 p.m.; 4 Hrs. CLE; \$165; To register: 1-800-CLE-NEWS or on www.ali-aba.org .
5-23-00	Ali-Aba: A 2000 Update: Clean Air Act	Law & Justice Center; 10:00 a.m.-2:00 p.m.; 4 Hrs. CLE; \$165, \$125 for government employees, \$50 for students; To register: 1-800-CLE-NEWS or on www.ali-aba.org .
5-25-00	ADR Primer: Leading Your Horse to Water	Law & Justice Center; 3 Hrs. CLE/NLCLE; \$40.00 YLD, \$55 others. Door registrants add \$10.
5-31-00	Trial Academy 2000 Part III: Depositions & Examination	Gore Auditorium, Westminster College; 6:00-8:00 p.m.; 2 Hrs. CLE/NLCLE; \$30 YLD; \$40 Litigation Section Members, \$50 nonmember per seminar.
6-8-00	Objections at Trial and How to Deal with a Difficult Lawyer Featured Speaker: Judge Myron Bright, U.S. Court of Appeals, Eighth Circuit	Law & Justice Center; 8:00 a.m. registration, 9:00 a.m.-5:00 p.m.; 7 Hrs. CLE; Price TBA (see website for additional information http://www.utahbar.org/cle). Attendees receive "Objections at Trial." Co-Authored by Judge Bright, Professor Ronald Carlson, and Professor Ed Imwinkelried.

For current seminar information and registration, access our Website at 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 served basis, plus a 25% late charge unless otherwise indicated.

Registration for (Seminar Title(s)):

(1) _____ (2) _____

(3) _____ (4) _____

Name: _____ Bar No.: _____

Phone No.: _____ Total \$ _____

Payment: ☐ Check Credit Card: ☐ VISA ☐ MasterCard Card No. _____
☐ AMEX Exp. Date _____

DATES	TITLE	PLACE, TIME, CLE CREDIT, PRICE
6-8-00	Ali-Aba: Annual Spring Estate Planning Practice Update	Law & Justice Center; 10:00 a.m.-1:15 p.m.; 3 Hrs. CLE; \$165; To register: 1-800-CLE-NEWS or on www.ali-aba.org .
6-9-00	New Lawyer Mandatory	Westminster College, Gore Auditorium – Pre-registration required; check begins at 8:00 a.m., seminar begins at 8:30 a.m.-12:00 noon; CLE credit – new lawyers are required to attend ONE mandatory seminar during their first compliance term; \$45; Seating limited to 144.
6-15-00	Ali-Aba: ERISA Fiduciary Responsibility Issue Update: Qualified Pension and 401(k) Plans, ESOPs, and Health Plans	Law & Justice Center; 10:00 a.m.-2:00 p.m.; 4 Hrs. CLE; \$165; To register: 1-800-CLE-NEWS or on www.ali-aba.org .
6-16-00	Annual Legal Assistant Division Update & Seminar	Hampton Inn, 10690 South 160 West in Draper, Utah; 8:00 a.m.-4:30 p.m.; 6 Hrs. CLE; \$65 for LAD members, \$75 for nonmembers before June 2, 2000. Add \$10 after June 2, 2000.
6-22-00	Business Planning Primer: Corporate Delicti	Law & Justice Center; 3 Hrs. CLE/NLCLE; \$40 YLD, \$55 others, door registrants add \$10.
7-12-7-15-00	Utah State Bar Annual Meeting, San Diego, California	Hotel Del Coronado; Registration before 6-6-00; \$250, after \$280 for everyone; Legal Assistant Division members \$125; non-lawyer \$50; For more information access our web site at www.utahbar.org/sites/annual .
7-20-00	PLI: Litigation Case Management for Legal Assistants	Law & Justice Center; 9:00 a.m.-4:00 p.m.; 6 Hrs. CLE; \$299. To register: 1-800-260-4754 or on www.pli.edu .
7-26-00	Trial Academy Part IV: Expert Witnesses	Gore Auditorium, Westminster College; 6:00 p.m.-8:00 p.m.; 2 Hrs. CLE/NLCLE; \$30 YLD; \$40 Litigation Section Members; \$50 non-member per seminar; parking available off 1700 South 1200 East, see map on website at www.utahbar.org/cle .

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Attorneys at Law
77 West 200 South #401
Salt Lake City, Utah 84101
Telephone: (801) 578-3510
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The members of the law firm of Droz, Reed & Wangsgard, L.C. are pleased to announce the formation of their new firm.

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(formerly of Blackburn & Stoll, L.C.)

Larry G. Reed
(formerly of Anderson & Karrenberg)

Scott Ross Wangsgard
(formerly of Conder & Wangsgard, L.C.)

The firm's practice emphasizes commercial litigation, employment law, real estate and commercial transactions.

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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: 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 its discretion, reject ads deemed inappropriate for publication, and reserves the right to request an ad be revised prior to publication. For display advertising rates and information, please call (801)538-0526.

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

In-House Counsel – Fast growing Internet company seeking In-House Counsel to join our fast-paced team. Utah licensed attorney with 2-4 years experience in general counsel, employment, and contract negotiations required. OnePipeline.com is a pre-IPO Internet company serving the mortgage industry. Our environment is fast-paced, exciting, and leading edge. Compensation is commensurate with experience. Opportunities for stock options based on performance. Please send resume, including salary requirements to: OnePipeline.com 6322 South 3000 East, Suite 200 Salt Lake City, UT 84121 (801) 313-8245 Fax E-mail jobs@onepipeline.com Equal Opportunity Employer.

POLICY ANALYST – Lawyer for research/advocacy on family, child welfare and poverty issues. Join the staff 7/1 of a respected organization and make a difference for children. Flexible work schedule may be a benefit. Call Utah Children at 364-1182 for job description and information on how to apply.

Attorney with 3-4 years experience is needed for a downtown law firm that focuses on business, civil, real estate, bankruptcy, collection, commercial, estate planning and corporate law. Contact Rebecca Marshall, Corbridge Baird & Christensen, at 534-0909.

Salt Lake Firm seeking full time Attorney in the area of Estate and Business Planning. Job description: Organize, supervise and review Business and Estate planning documents. Send a resume to Utah State Bar Box No. 45, 645 South 200 East, Suite 310, Salt Lake City, UT 84111.

ASSOCIATE ATTORNEY POSITION – Small Southern Utah estate & business planning firm seeks attorney with strong tax background, CPA preferred. Excellent academic credentials, writing and analytical skills required. Send resume and writing sample to Barry E. Clarkson at ALLEN, ATKIN & CLARKSON, LLC, 1240 East 100 South, Ste 10, St. George, Utah 84790.

CONTRACT ATTORNEY – First USA Financial Services, a leading commercial card provider headquartered in Salt Lake City, is searching for a Contract Attorney. This position will be responsible for the development and negotiation of commercial payment system agreements with Fortune 100 companies and will report to the President of the company. Credit card or banking experience is preferred. First USA is a dynamic, high growth organization with a strong and leading internet presence. First USA provides first-rate benefits, competitive salary, 401k and pension. If you are a dedicated professional with an entrepreneurial outlook, please fax your resume to: (801) 281-5858.

POSITIONS WANTED

Salt Lake Attorney with 20+ experience seeks part or full time position. Experience includes Estate Planning, Taxation, Title Insurance, Corporate Law, and Employment Law. Submit inquiries to: Christine Critchley, Confidential Box #81, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

FOR HIRE: CORPORATE LEGAL DEPARTMENT – On March 14, 2000 Cordant Technologies announced that it will be acquired by Alcoa. Cordant has a legal department with experienced and highly effective attorneys, paralegals and administrative staff, but, it is unlikely that Alcoa will be able to retain them all. Corporations or law firms interested in receiving resumes or talking to any of our people should contact: Dan Hapke, Sr. VP & General Counsel, Cordant Technologies Inc., 15 W. South Temple, Suite 1600, Salt Lake City, Utah 84101-1532, Phone: (801) 933-4200, Fax: (801) 933-4203, E-mail: dan.hapke@cordant.com.

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EXCHANGE PLACE HISTORICAL BLDG., LOCATED HALF BLOCK FROM COURT COMPLEX, HAS LARGE INDIVIDUAL OFFICE SPACE WITH SEPARATE SECRETARIAL AREA LOCATED WITHIN SMALL LAW FIRM, ALSO INCLUDES RECEPTIONIST, CONFERENCE ROOM, FAX, COPIER, LARGE LAW LIBRARY AND PARKING FOR \$975.00. INTERNET DSL LINE AVAILABLE. CONTACT REBECCA MARSHALL 534-0909..

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CONTRACT RESEARCH AND BRIEFS – I have 36 years of general practice experience in Utah and am seeking contract work in the area of research and writing briefs at trial and appellate levels. Contact Jay A. Meservy, 210 Pebblewood Lane, Centerville, UT 84014. Telephone and FAX (801) 298-2069. e-mail: jameserv@burboyne.com.

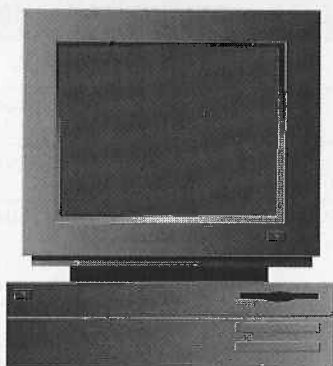
FIDUCIARY LITIGATION: WILL & TRUST CONTESTS: Consultant and expert witness, will trust contracts; estate planning, malpractice and ethics, Charles M. Bennett, 77 W. 200 South, Suite 400, Salt Lake City, Utah 84101; (801) 578-3525. Fellow and Regent, the American College of Trust & Estate Counsel; Adjunct Professor of Law, University of Utah; former Chair, Estate Planning Section, Utah State Bar.

CHILD ABUSE – SEXUAL EVENTS/DEFENCE: Case analysis of all issues related to statement evidence – Identify investigative bias-prejudice in video recorded hearsay testimony and potential effects on jury decision – Evaluate court's reliability decision as in RCP 76-5-411 and RE 15.5, 1102 – Determine origin of allegation and alternative sources – Appeal issues. Bruce M. Giffen, D. Psych. Evidence Specialist. American Psychology-Law Society, (801) 485-4011.

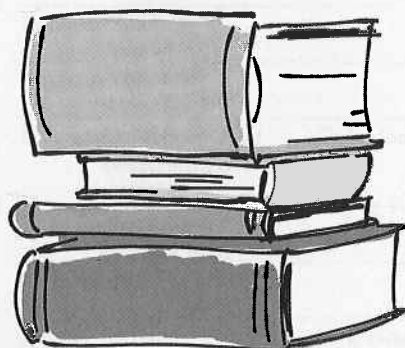
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VS.



Having a hard time deciding which box to check on your registration form?

CD-ROM vs. Printed Materials

FYI: The breakout session will have hard copies of the materials if those materials need to be referred to by the Members during the session.

Free CD-ROM demonstrations available
at the Annual Meeting

Questions: call Connie at 297-7033

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CERTIFICATE OF COMPLIANCE

For Years 19____ and 19____

Utah State Board of Continuing Legal Education Utah Law and Justice Center

645 South 200 East

Salt Lake City, Utah 84111-3834

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

Name: _____ Utah State Bar Number: _____

Address: _____ Telephone Number: _____

Professional Responsibility and Ethics

Required: a minimum of three (3) hours

1. _____
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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.

Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111

CYCLE 1999 REG CR 33 ETHICS 3
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