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COVER: Sunset in Utah's West desert as seen through Sun Tunnel, taken by Pauline Fontaine, Executive Director of the Utah Trial Lawyers Association. The Sun Tunnel was sculpted by New York environmental artist Nancy Holt and was erected in 1976. The photo was taken on June 21, 2001, during the Summer Solstice. For additional information, see Ann Poore's article on sun tunnels that ran in the *Salt Lake Tribune* on June 14, 1992.

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Utah Bar JOURNAL

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Letters to the Editor

Dear Editor:

Assuming Neil Sabin's article "Justice Court, Fairness and the Law" is factually accurate, and I presume the *Bar Journal* was not engaged in an effort to encourage Mr. Sabin in a failed attempt at fictional humor, then the circumstances described in the article are an outrage. However, the behavior of Mr. Sabin and the *Journal* in not naming the responsible court, judge, and prosecutors is also outrageous. If the justice court system is broken, it is worthless to detail the problem without identifying the responsible parties. Nothing will be fixed by Mr. Sabin going home and taking a long shower.

Seymour Copperman, Colonel, USAF (Ret.)

Dear Editor:

Neil Sabin, I feel your pain. Frankly, though, it sounds as if your experience in "justice" court was typical. Ex parte conversations, discovery abuses and the like are common in too many justice courts. Those courts frequently serve only to railroad defendants up to a city's cash register. Few defense attorneys seriously contest these cases, since it's easier to take a fee and then compromise. The appellate courts are closed to those wronged in justice court, so there is little chance that the justice system will fix itself. Consequently, this situation is unlikely to change. It's a shame that the bar – which claims to want to improve the public's perception of the law – does nothing to clean up the system.

Still, I am reminded of an inspirational story. A few years back I was listening to an ethics CLE presentation in which a panel of experienced deputy county attorneys were discussing case screening and when to decline to prosecute. After several minutes, a city prosecutor accustomed to justice court arose and asked how on earth the panelists could justify turning down cases brought by the police. He just couldn't grasp it, or imagine saying no to local law enforcement. I was proud to see the professional prosecutors firmly and unanimously agree that prosecutors exist to do justice, not to win for the sake of winning, and that they absolutely must dismiss bad cases early on.

Utah's own contribution to the U.S. Supreme Court, Justice Sutherland, made this clear in *United States v. Berger* when he stated that prosecutors (and this would apply to judges also) must be sure both that guilt does not escape and that innocence does not suffer. This message has yet to sink in at too many justice courts.

Paul Wake

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2. No one person shall have more than one letter to the editor published every six months.
3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal* and shall be delivered to the office of the Utah State Bar at least six weeks prior to publication.
4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters which reflect contrasting or opposing viewpoints on the same subject.
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.
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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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Interested in writing an article for the *Bar Journal?*

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

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

Submission of Articles for the Utah Bar Journal

The *Utah Bar Journal* encourages Bar members to submit articles for publication. The following are a few guidelines for preparing your submission.

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.
6. Citation Format: All citations should at least attempt to follow *The Bluebook* format.
7. Authors: Submit a sentence identifying your place of employment. Photographs are discouraged, but may be submitted and will be considered for use, depending on available space.

What Lawyers Can Do in Times Such as These

by Scott Daniels

Shortly after the terrorist attack of September 11, it became apparent that many Utah reservists and members of the Utah National Guard would likely be activated. In addition, Utah members of the military may be deployed overseas. As a consequence, these women and men and their families may require legal services they would not have otherwise required. On October 5, the Bar sent an e-mail request for pro-bono volunteers to all Bar members who have e-mail addresses on file. I am pleased to report that the response has been overwhelming. Within three days 122 lawyers volunteered to help. In addition several firms comprising 105 additional lawyers volunteered. The entire Cache County Bar Association volunteered. The University of Utah College of Law pro bono project volunteered to provide research or clerk services.

Services may be required in almost all areas of law. Most servicemen and women will require simple wills and powers of attorney. Some will have much more complicated problems. So far most of the assistance requested has been in the area of family law, taxation and business planning, estate planning, and employment law. Although the military has JAG officers available, many of them do not have expertise in these largely civilian specialties. Further, they usually are not authorized to represent servicemen and women in these civilian matters. Even if they were, their resources are not sufficient to handle the volume that may be required.

Much help is needed in the area relating exclusively to the military, such as application of the Soldiers' and Sailors' Civil Relief Act and the Uniformed Services Employment and Reemployment Act. Obviously very few civilian lawyers have expertise in these areas, but these areas of law can be learned. The Military Law Section will be hosting a seminar on December 5 at 1:00 P.M. to train volunteers in this area. There is an excellent article summarizing the Soldiers and Sailors' Civil Relief Act in Vol. 4 number 3 Utah Bar Journal (1991). Its co-author, Kevin Anderson is updating it and it should be available on the Bar web site by the time you read this.

The Bar has a full time pro-bono coordinator who will be matching the needs with the volunteers attorneys. His name is Charles Stewart and he can be reached at 801-297-7049. The Bar has a malpractice insurance policy in effect which covers pro-bono work provided through the Bar. Attorneys who do not have malpractice coverage (such as corporate counsel and government attorneys) should be sure that any pro bono work done for military personnel is coordinated through the Bar so that the malpractice coverage is in effect.

I understand that roughly 35,000 reservists have been activated so far. This is about one-eighth the number activated in Desert Storm, so we may expect a large number of activations in the near future. I understand that in some cases there may be activations with as little as 48 hours notice. In most cases there will be more notice, sometimes as much as 30 days. In any event we hope to have in place a list of attorneys by area of practice to be quickly matched with the persons needing assistance. I request that if you have volunteered and are assigned a serviceman or woman to assist you will act with all deliberate speed to render the assistance.

Let me share with you a few of the replies to my e-mail request for volunteers. "I would be honored to assist with this project." "I am happy to volunteer whatever I can." "As a new lawyer, I am still developing my areas of practice, so I don't really know a great deal about the areas of law mentioned, but I am available 10+ hours per week." "I absolutely volunteer" "My practice areas are securities and mergers and acquisitions. I understand that there may not be much call for those services in connection with the mobilization of reservists. Even so, to the extent I can be of help, please contact me." "If there is some way I can help please let me know." "I am more than willing." "I am willing to help."

There were dozens of responses similar to these. They made me proud to be a lawyer.

The Bar, the Courts, Criminal Justice and the Olympics: Handling the Impact of the Olympic Games on the Courts, Law Practice and Criminal Justice in Utah

by David Schwendiman

EDITOR'S NOTE: *This article was originally delivered as a seminar at the Utah State Bar's Annual Convention in Sun Valley, Idaho on July 7, 2001. This material has not been revised since the terrorist attacks of September 11, and recent events only further underscore its importance.*

I. Introduction

In February 2002, Utah will be host to the largest Olympic Winter Games ever staged. The event will affect the state in dramatic ways, but life will go on for the vast majority of its citizens in spite of the Games. In almost every aspect of the lives of the communities involved in the Olympics, a workable balance will be found between the routine and the extraordinary for the seventeen days of the event. There will be unique, sometimes large and unavoidable, but tolerable, financial and practical costs associated with the Games. The Utah State Bar, the courts and the criminal justice system have important roles to play in helping the communities they serve handle the unique demands of the event. How well they succeed will determine to some extent whether the 2002 Olympics are an economic, sporting and practical success for Utah, the United States and the Olympic Movement.

Planning to meet the challenge to the courts and criminal justice system posed by the Games means designing ways to preserve the routine in every possible way. It involves creating plans for maintaining appropriate levels of essential services for the legal community and the people it serves while managing for the special needs related to the Games and keeping costs as reasonable as possible.

The purpose of this article is to place the challenge the Games pose for the profession, the courts and criminal justice in a proper context. It describes the features of the plan devised to handle the challenge and lays out the assumptions behind the plan. It is not a comprehensive review of the subjects mentioned. While arrangements for handling many of the public safety and law enforcement issues raised by the Games are in place, many of the details remain unsettled. In the months left before the Games open on February 8, 2002, the true impact of the Games on critical legal services will become clearer.

II. The 2002 Olympic Winter Games

In order to understand the place of court operations and criminal justice in the thinking regarding the Olympics, it is important to know as much as possible about the context within which the courts must function during the Games.

The modern Olympic Games were conceived in 1894.[1] The Games of the first modern Olympiad were held in Athens in 1896. The Summer Games (Olympiads) have been held 24 time since their revival, the last being in Sydney in 2000. They have been interrupted twice by war. The Games return to Athens in 2004.

The first Olympic Winter Games were held in Chamonix, France in 1924 as the winter companion to the VIIth Olympiad planned for Paris. They have been held eighteen times since their inception.

The honor of hosting the Olympic Games, Summer and Winter, is "entrusted by the International Olympic Committee (IOC) to a city, which is designated as the host city of the Olympic Games."[2] Salt Lake City was awarded the XIXth Olympic Winter Games by the IOC in Budapest on June 16, 1995. At the same time, Salt Lake City became the host for the VIIIth Paralympic Winter Games.

The Utah Games will be the fifth Winter Games held on the North American continent (Lake Placid, 1932, Squaw Valley, 1960, Lake Placid, 1980, and Calgary, 1988). Salt Lake City is the third United States venue to host the Winter Games since they were

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first held in Chamonix in 1924.

The Utah Games will be the largest Olympic Winter Games ever staged. Nonetheless, Utah's Games will be approximately one-third the size of previous Summer Games.[3]

III. The Utah Olympic Public Safety Command

Adequate public safety preparations for special events like the Olympic Games are necessary to assure the public that it will be safe during the event. The role of law enforcement and public safety in connection with the Games is to help create an environment that allows the people of Utah, as well as those who come to Utah to compete, officiate, support or run competitions, and those who visit to spectate or simply to be near the event, to be reasonably confident that they will not be the victims of a crime while they are in Utah for the Games.

Competitors who come to Utah to take part in the Games must be able to devote all of their attention to the pursuit of their Olympic dreams without worry for their safety. The Organizing Committee, the State of Utah, Salt Lake City, and the other venue communities are giving the international winter sports community the finest facilities in the world on which to compete, in the most beautiful settings ever for a Winter Games, but none of that will mean anything unless the events and the venues are secure. Law enforcement, public safety and the courts are bound to provide a level of service during the Games that helps make that possible within constitutional and legal bounds.

The era of intense and costly public safety and security planning as a feature of Olympic preparations began after the events of September 5 and 6, 1972 during the Summer Games in Munich. The deaths of eleven Israeli athletes, coaches and officials, along with the deaths of a German police officer, Anton Fliegerbauer, and five of eight members of the Palestinian Black September organization who carried out the assault on the Israeli quarters in the poorly secured Olympic Village, established forever the real possibility that hallmark events like the Olympic Games would be used as a stage for extraordinary criminal acts. The two day drama was watched by hundreds of millions of television viewers.[4] From the point of view of the Palestine Liberation Organization, the attack on the unsuspecting and woefully unprepared sporting event was a major strategic success, despite failing tactically. It pushed the question of Palestine to the front of the international stage.

Since Munich, the Olympics must be counted among the most inviting and prestigious terrorist targets imaginable. The cause may change, but the theater remains. Few other events are as conspicuously open, occupy international attention for as long, are covered as heavily by the national and international media, or involve the transnational movement of as many participants and spectators in such a short period as the Games. Few international or national events offer the opportunities for political violence that the Games provide.

Despite the history of low reported crime associated with past Olympic Games, the large number of people preoccupied with the events, the relative affluence of the spectators the Games draw, the festival like atmosphere of the events, the mix of cultures, and the energy of the competitions also create an inviting climate for common criminal activity.

Protecting the participants, visitors and spectators as well as the citizens of the State of Utah and the nation and the Games themselves from the consequences of crime is essential to the success of the Games and the security of the community. Anticipating, preventing and responding swiftly and appropriately to common crime as well as acts of terrorism that threaten the security of the Games, the state and the nation are fundamental components of that task. Providing effective access to the judicial system for citizens as well as visitors during the Games is a vital part of meeting that responsibility.

In 1998, the Utah Legislature created the Utah Olympic Public Safety Command to manage public safety and law enforcement planning and operations for the 2002 Games.[5] For administrative purposes the Olympic Public Safety Command was made part of the Utah Department of Public Safety.[6] The Commissioner of Public Safety serves as chair of the Command and is the "Olympic law enforcement commander" for the State of Utah.[7]

Members of the Utah Olympic Public Safety Command include representatives of the principal local law enforcement and public safety agencies in the State of Utah and in the seven counties most directly affected by the Games. The Salt Lake Organizing Committee (SLOC) has a member on the Command as do the FBI, Secret Service and the Bureau of Alcohol Tobacco and Firearms (ATF). The FBI is the only federal agency made a member of the Command by mention in the statute.[8] The Secret Service and ATF became members of the Command by appointment.

The Utah Attorney General is counsel to the Command.[9]

The mission of the Command is to provide law enforcement and public safety services related to the 2002 Games, including, as of the last legislative session, the Paralympics Winter Games.[10] Among the law enforcement and public safety services the Command is required to provide in relation to the Games are "programs and

services" to "reduce or prevent crime," "reduce death and injuries on highways," "prepare for and respond to an emergency," "provide forensic, communications, and records support services," "provide for crowd and traffic safety," "provide for and assist in criminal investigation," and "improve criminal justice processes."[11]

Planning for the courts and criminal justice in connection with the Games is driven largely by the statutory responsibility the Command has to improve criminal justice processes to put them in the best position for handling the demands the Games might be expected to impose on them.

The Command is required by statute to prepare a written plan for "law enforcement and public safety services related to the Olympics, including the coordination of personnel and resources of state and local law enforcement or public safety agencies."[12] The plan must allow "latitude and flexibility . . . to promote the effective, efficient, and cooperative implementation of the plan and the preservation of public safety."[13] A basic plan is complete. One of its most important features is the portion dealing with the operation of the courts and criminal justice functions during the Games.

IV. Planning Assumptions

Planning for court and criminal justice operations in connection with the Games is based on several assumptions supported by the study of previous events, Summer, and to the extent possible, Winter Olympic Games, and experience with the most recent Summer Games. The assumptions are discussed at greater length further on, but they can be summarized as follows:

- The Games will have an impact on the courts and criminal justice operations, at least in the seven county (Weber, Morgan, Davis, Summit, Salt Lake, Wasatch and Utah) Olympic theater before the Games, during the Games, and for a time after the Games are finished.
- Adjustments in the way business is conducted in the courts and in the criminal justice system during the Games will need to be made to respond to the effect the Games will have on operations, not in the way the law is enforced as much as in how matters are handled procedurally. Certainly not by sacrificing justice for expediency. Nonetheless, flexibility in scheduling and managing operations will be required.
- Reported crime will likely drop during the Games (February 8 to February 24, 2002). There are, however, reasons for this phenomenon that do not mean there will be fewer crimes than normal (i.e., fewer criminal episodes, fewer call outs) or that adjustments in how business is conducted can or should be avoided or ignored. One reason this assumption is qualified is that approximately 40% fewer law enforcement officers will be performing their normal duties during the Games. These officers will be engaged in Olympic related law enforcement assignments. They won't be responding to or reporting crime in the ordinary way during the seventeen days they are on Olympic duty. A common sense, non-confrontational approach to law enforcement during the Games is also being urged that will, hopefully, reduce the number of reported offenses committed in connection with the Games themselves. There is no historic evidence to support a conclusion that Olympic visitors will cause the rate of reported or unreported crime to go up. There are special problems related to foreign visitors that may require the attention of the criminal justice system and the courts, but no reason to think they will bring a crime wave with them to Utah. In fact, another reason for there being fewer reported crimes than expected in prior events is the reluctance of foreign visitors to report crime, especially minor crimes, because they don't understand or want to be involved in the criminal justice process while they are visiting.
- The likelihood that a catastrophic criminal event will occur during the Games is extremely remote, but because of the consequences of a major incident (e.g., loss of life, injury to person, loss of property, short and long-term damage to the prestige and reputation of the city, state and nation, effect on national and foreign policy), the courts and criminal justice system in Utah must be fully prepared to support the effort necessary to legally prevent or frustrate such an event, to support efforts to mitigate its potential effect, to support the response to such an event if it occurs, and to play a proper role in the resolution and disposition of the criminal cases that follow.
- The community must be assured of access to the courts and the criminal justice system in the seven county theater of operations during the Games, particularly when it is required to protect life, avoid injury, and protect property that is in immediate jeopardy. As a corollary, law enforcement must have access to the courts and the criminal justice system to ensure it can enforce the law and properly investigate violations during the Olympic period, regardless of what is going on with the Games. Defendants must have access to the courts and the speedy process guaranteed them by the laws and Constitutions of the United States and the State of Utah.

- Courts and criminal justice will be affected to some extent by foreign visitors who will be in the State of Utah as a result of the Games. The participants in the system will require education, training and information regarding the special challenges this will impose on the courts and the system of criminal justice in Utah.
- There will be unique issues for which the courts and the criminal justice system share responsibility in connection with the Games. These will be issues that involve conduct more likely to occur as a consequence of the Games than would be the case if the Games were not being staged in Utah. Intellectual property enforcement; doping and elite sport, and the involvement of foreign nationals in the criminal justice system are all examples of such issues.
- With competition for the limited funding available to stage the Games as sharp as it is, it is unlikely any funding will be provided by the legislature or the organizer for Olympic related court and criminal justice operations. Everything must be done with as little cost above what is already appropriated for the courts and criminal justice as possible. What is done must be done with what is already in place, or can be adapted for use with little cost, or with what can be acquired without cost. The legacy of the Games for the courts and the criminal justice system will be the memory of a job well and professionally done, of agreement regarding prosecution guidelines and process, and not new or improved facilities or support acquired simply to meet an Olympic need.
- Finally, it is a basic assumption that the legal and criminal justice communities in Utah want to do it right and well, that is, reasonably, effectively, fairly. If they must have contact with our courts and criminal justice system, our visitors ought to remember Utah and their Olympic visit and the Olympic experience for how professionally they were treated. Their treatment, whether they are victims, witnesses or offenders, should be remarkable for its efficiency, effectiveness and fairness.

The plan drafted over a year and a half ago is based on these assumptions. Experience, study, collaboration with Australia and rigorous testing have refined the features of the plan, making it simpler and more workable.

V. What about crime and the Games?

Court and criminal justice services in the communities where events, including events other than those considered "official Olympic events" (e.g., community events such as those planned in Park City each night of the Games), will be staged or where support facilities or services for the Games are located, will be influenced to a greater or lesser extent by a variety of factors. The type of event involved will dictate how likely it is that extraordinary court or criminal justice services will be needed. The type of spectators and crowds the event draws will play a big part in the calculus as well. The question for the courts and criminal justice system is how likely is it that the people coming to attend or participate in the events will commit crime or become victims of crime while they are in the community for the Games? The number of days during the Olympic period that the venue, site or support facility is used will tell those responsible for the courts and criminal justice operations in a location how big a strain to plan for. When the venue or facility will be used during the days it is active for competition or training will also figure into that consideration as will what else is going on around the event or the facility.

Additionally, difficulty reaching or using court and criminal justice services caused by the traffic and transportation adjustments made for the Games will affect everyone in the system from defendants to jurors, witnesses, and court personnel. The availability for court proceedings and pre-trial and pre-hearing preparation of law enforcement officers who are assigned Olympic responsibilities during the Olympic period will also add to the overall impact on the ability of the courts and criminal justice system in Utah to manage during the Games.

Each of the factors mentioned must be dissected and examined in every community affected by the Games in order to plan for the true criminal justice impact of the Olympics. There are, however, some general facts and circumstances learned from prior events that can inform planning.

For a variety of reasons, some of which are peculiar to the event, for Summer Games staged in Atlanta in 1996 and Sydney in 2000, reported crime, with few notable exceptions (e.g., the Centennial Park bombing in 1996), was not an issue that made increased or unusual demands on the existing criminal justice systems in the host communities.

In both cases studied, however, detailed plans were made for handling increased caseloads and for dealing with extraordinary circumstances.[14] In each, planning was based on the assumption there would be an impact, however unpredictable, on how court and criminal justice services were delivered during the Games period. Neither assumed any impact from the Paralympics that required special planning or treatments.

What happened in Sydney suggests the true impact of the Games on

criminal justice services will occur during the months following the close of the Olympics. Matters taken in during the Games and set over for disposition after the close of the Games, combined with the ordinary case load will increase demand on the courts for months following the close of the Games. This will be troublesome for the courts generally because law enforcement personnel may be hard to schedule during that time. Many will be owed time off that was suspended or denied leading up to and during the Games.

While there are no existing data from which clear conclusions can be drawn regarding whether ordinary crime will increase in connection with the Games,[15] especially the Winter Games, it is prudent to assume that the event will nonetheless require adjustments in how the courts and the criminal justice system do business at least in the seven county Olympic theater of operations in Utah between February 8 and February 24, 2002. Unless further study proves otherwise, it is also safe to assume there will be no real impact on the courts as a consequence of the Paralympics, and that no adjustments will be required for the Paralympics.

None of these assessments holds, of course, if an extraordinary criminal event such as an act of terrorism, a bombing or other significant multi-jurisdictional crime is committed during or in connection with the Games. If that happens, the impact on all aspects of the criminal justice system in Utah will be dramatic. While Utah has had its share of high profile criminal cases, nothing it has experienced to date will compare with the kind of coverage and attention a serious act of violence will receive if committed during the Games.

VI. How will routine crime be handled during the Games?

As mentioned earlier, achieving a workable balance between the routine and the extraordinary for the seventeen days of the Games and keeping all of the costs associated with doing so as low and as bearable as possible, can be accomplished only by keeping to existing routines as much as possible, using existing facilities, existing staff, and maintaining routine hours in every affected community, except where that cannot be done because of the size of the community, the size of the event planned for the community, or because of how events are scheduled.

The courts in each community involved with the Games know their own business and the populations they serve better than anyone else. For that reason, the District Court in each affected community has been asked to designate at least one facility and one or more courts in each District as a Designated Olympic Court or DOC. Each such court has been asked to create a team responsible for implementing a strategy to provide criminal justice and court services to the areas affected by the Olympic Games between February 8, 2002 and February 24, 2002.

It is recommended that the teams include the following people to ensure that the interests that should have a say regarding the appropriate management of criminal justice operations during the seventeen days of the Games are included in the planning:

- District Judge
- Juvenile Court representative
- Justice Court representative
- Court Executive
- County or District Attorney
- City Prosecutor
- Legal Defender or criminal defense representative
- Civil practice representative
- Victim Services representative
- Detention/Corrections representative
- Venue Commanders for the venues or sites located within the jurisdiction of the Court
- a representative from the Utah Olympic Public Safety Command
- a representative of the Administrative Office of the Courts

Designated Olympic Courts are contemplated for:

- Ogden (2nd District) – Serving Ogden and Weber County, including the Ogden Ice Sheet located on the campus of Weber State University
- Huntsville (2nd District) – Serving Snowbasin
- Farmington (2nd District) – Serving Davis County, particularly the Park and Ride lot for Snowbasin
- Morgan (2nd District) – Serving Morgan County, particularly the Park and Ride lot for Snowbasin at Mountain Green
- Matheson Center, Salt Lake City (3rd District) – Serving Salt Lake County, including the Salt Lake City venues and sites (i.e., Delta Center, Medals Plaza and Olympic Boulevard, Rice-Eccles Stadium, Olympic Village, Main Media Center/International Broadcast Center, training facilities at Steiner Aquatic Center)
- West Valley City Court, West Valley City (3rd District) – Serving West Valley City, including the Olympic Oval at Kearns, E-Center, and the training facilities at Accord Arena
- Summit County Justice Center, Highway 40 (3rd District) – Serving Western Summit County, including Olympic Sports Park, Deer Valley, Park City, and the Park and Ride lots asso-

ciated with each

- Wasatch County Justice Center, Heber City (4th District) – Serving Wasatch County, including the Soldier Hollow Cross Country and Biathlon venue and the Park and Ride lots associated with the venue, as well as the unofficial athlete residences in Wasatch County
- Provo (4th District) – Serving Utah County, including the Seven Peaks Ice Arena
- Federal District Court, Salt Lake City – Serving the District of Utah

Among other things, each Designated Olympic Court is encouraged to:

- Define the geographical and jurisdictional limits of the areas it will serve during the Games.
- Consolidate all routine operations of the courts, including Justice Courts, that must be conducted in the District during the Games into the one or more courts identified as Designated Olympic Courts and suspend the operations of the remaining courts in the District for the Olympic period between February 8 and February 24, 2002.
- Each District is encouraged to scale back operations for the Games period by scheduling as many criminal and civil matters in advance of the Games as possible to eliminate the need to conduct business during the Olympics. They are also encouraged to set matters that are not time sensitive over to dates after the Games.
- The Courts in each District are discouraged from setting jury trials or hearings requiring witnesses, especially law enforcement witnesses, during the Games. This will eliminate the problem of having to seat jurors who will have transportation problems or will be affected by the perception there will be transportation problems associated with the Games that will interfere with their coming to the site of the Court for jury duty. This will also eliminate the concern many advocates have that jurors will be distracted by the Games. It will eliminate the problems associated with having witnesses who will likewise be distracted. Most important, it will eliminate the problems associated with having 40% of the sworn law enforcement officers in the seven county theater assigned to Olympic duties and unavailable for hearings and trials without compromising the public safety and security of the Games.

Each Designated Olympic Court, with the assistance of representatives of the Utah Olympic Public Safety Command, will create its own Operations Manual. The Manual for each Designated Olympic Court will, at a minimum, contain: (1) an operations plan for the Designated Olympic Court, i.e., how many courts will comprise the Designated Olympic Court, what each will do during the Games, what it won't do, whether it will schedule matters over after the Games, whether it will set jury trials, hearings and other matters during the Games, what provisions will be made for emergency matters, the plan for processing offenders during the Games, etc.; (2) a description of the area covered by the Court, i.e., the geographical coverage of the Designated Olympic Court; (3) the hours of operation for each of the Designated Olympic Courts for the seventeen days of the Games, beginning February 8, 2002 and ending February 24, 2002; (4) operating schedules for each of the venues located within the area covered by the Designated Olympic Court; (5) rosters of the teams that will be covering each of the courts and the processing center that comprise the Designated Olympic Court (District Judge/Justice, Court Executive, Court Clerk, County or District Attorney, City Prosecutor, Legal Defender or defense counsel, Juvenile Court representative, Victim/Witness Services representative, Detention/Corrections staff, booking and processing staff); (6) schedules of coverage for the hours of operation, i.e., which teams, where, when;(7) lists of critical

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telephone numbers, contacts, etc.; (8) a copy of the operations plan for the Olympic Coordination Center; and (9) a form book.

All crimes and other matters during the Olympic period, whether Olympic related or not, requiring the attention of a District or Justice Court will be handled in the first instance by the Designated Olympic Court with jurisdiction over the offense or matter in the geographical area in which it arose. If the matter can be resolved by the Designated Olympic Court or can be handled summarily, the Designated Olympic Court will deal with it as swiftly as appropriate under the circumstances. If a matter cannot be resolved without further detention of the offender or if it requires setting a preliminary hearing or other proceeding, the Designated Olympic Court may choose to handle the matter or set it over to be heard by an appropriate court after February 24, 2002, unless speedy trial considerations require a more expeditious treatment.

VII. What is the role of the Olympic Coordination Center?
The Olympic Coordination Center or OCC is located in the Utah Olympic Public Safety Command building. It is the place from which public safety and security matters, including criminal justice matters, will be coordinated during the Games to ensure the best possible service and most efficient use of public safety resources in connection with the Games.

Within the Olympic Coordination Center there are two posts situated side by side for legal and criminal justice coordinators. One post will be staffed twenty-four hours each day of the Games beginning February 8 by an attorney from the United States Attorneys Office or the Department of Justice (including ACIRG[16]). The second post will be staffed by an attorney from the Utah Attorney General's Office.

Among other things, the two legal and criminal justice coordinators will track crimes committed in the Olympic theater, render advice regarding public safety and law enforcement operations conducted in connection with the Games, enlist appropriate assistance when obtaining search warrants, complaints, or other legal process becomes necessary, coordinate the use of limited criminal justice support services (e.g. interpreters, victim-witness counselors and service providers), assist in coordinating matters in case of a mass arrest situation, coordinate detention arrangements when required, make or advise regarding prosecution decisions, and make decisions and render advice regarding the legal and law enforcement strategies created for the event. The two legal and criminal justice coordinators will also advise the Commander of the Utah Olympic Public Safety Command and various prosecution authorities, including the Attorney General of the United States, on the status of criminal justice matters related to the Games.

In case of an extraordinary criminal event, the legal and criminal justice coordinators are available to provide immediate and appropriate advice and assistance regarding the response to, and the resolution, investigation and disposition of such events, providing tactical and forensic assistance and command related advice where needed and appropriate.

If a law enforcement officer or prosecutor in the field has any doubts regarding the legal basis for action, or regarding how a legal matter ought to be handled, including the enforcement of criminal law during the Games, he or she can contact the legal affairs and criminal justice coordinators in the Olympic Coordination Center for answers and assistance.

VIII. What is the Olympic Legal Affairs Handbook?
In order to help those working in the Designated Olympic Courts and in the Olympic Coordination Center, and to ensure, to the extent possible, that people are treated the same regardless where they might be in the Olympic theater during the Games, an *Olympic Legal Affairs Handbook* is being prepared.

The *Handbook* comprises three volumes:

- Prosecution Guidelines – a catalog of offenses covering the range of crimes that might be committed during or in connection with the Games. The offenses are divided into sixteen categories. As to each category, primary responsibility for investigating and prosecuting crime has been sorted out between local, state and federal prosecutors and guidelines have been written setting out who will handle a matter if it occurs during the Games. The idea is to avoid having to sort out responsibility during the event. For the offenses most likely to be committed, e.g., trespass, drunk and disorderly, etc., elements, bail schedules, fine schedules and special considerations are listed. Among other things, the guidelines allow the Utah Olympic Public Safety Command to make it clear to the Olympic Family and other visitors to the Games how criminal conduct will be handled and how they can be expected to be treated as a consequence. They also provide a basis for training law enforcement officers and agents from Utah and elsewhere who will have Olympic assignments during the Games.
- Law Enforcement Strategy – strategies devised to deal with special situations and circumstances that are likely to occur

during or in connection with the Games. The strategies are designed to give advice and direction on matters not ordinarily encountered by law enforcement or prosecutors, to serve as the bases for training law enforcement personnel in advance of the Games, and to give general guidance regarding issues of special significance in the context of the Games. They are also designed to help the legal and criminal justice coordinators in the OCC effectively advise the Command and others during rapidly developing situations. The strategies enable the Command to make it clear to the Olympic Family and others how certain special situations and issues will likely be handled. Among the strategies that are being developed are strategies for dealing with the possession and use of performance enhancing substances by competitors, trainers and others involved in competition, for handling offenders who are foreign nationals (to ensure the requirements of treaty and convention, *e.g.,* the Vienna Convention, are properly observed and to ensure that law enforcement personnel are appropriately educated regarding diplomatic immunity, asylum, etc.), for handling the offender who is a member of the Olympic Family (to ensure treatment that is consistent with how people who are not members of the Olympic Family are treated, but to make sure the appropriate authorities, e.g., National Olympic Committees, Immigration and Naturalization Service, etc., are notified regarding the offender and the offense)[17], for delivering victim witness services, for managing detention regarding those few people who must be taken into custody (to ensure availability of detention facilities, to set out uniform procedures for processing offenders, and to encourage appropriate and fair treatment of those taken into custody), for handling juvenile offenders, and for handling intellectual property offenses committed in connection with the Games.

- Operations Manuals for the Olympic Coordination Center and the eleven Designated Olympic Courts.

IX. Summary

The legal community in Utah is obliged to plan so that the routine of the community, especially insofar as the criminal justice system and the courts are concerned, is not disturbed any more than necessary as a result of the Games. The special circumstances created by the Games require courts to consider unique adjustments for the seventeen days of the Games, including scheduling hearings and trials to avoid the Olympic period, not scheduling trials and hearings involving law enforcement personnel and others who have Olympic law enforcement or public safety assignments, and designating, planning and staffing Designated Olympic Courts designed to meet the needs of the Games and the community during the Games.

An *Olympic Legal Affairs Handbook* is being prepared to give direction and guidance before and during the Olympic period. Further instructions regarding the *Handbook* and the operations of the Designated Olympic Courts will be given before the Games to those who will be working in the Designated Olympic Courts, to venue commanders and law enforcement personnel assigned Olympic duties, and to those who will be acting as legal affairs and criminal justice coordinators in the Olympic Coordination Center during the Games.

Among the most important features of the *Handbook* is the set of law enforcement strategies devised to deal carefully and uniformly with special situations and circumstances that are likely to occur during or in connection with the Games. The strategies are designed to give advice and direction on matters not ordinarily encountered by law enforcement or prosecutors.

The 2002 Olympic Winter Games are a unique opportunity for Utah residents to play a substantial part in the history of the state and the nation. The legal community in Utah shares responsibility with Utah law enforcement and public safety to make sure that during the Games the experience our residents and those who visit to compete or spectate have while they are in Utah is the best we are capable of giving them. We want them to leave determined to return because of the quality of our communities, our people, the competition, and the venues and because they felt safe and secure while they were here during the Games.

[1] *See Olympic Charter* (June 15, 1995), p. 10, Fundamental Principle 1.

[2] Olympic Charter, Rule 36(3).

[3] During the seventeen days of the Olympic Winter Games between February 8 and February 24, 2002, 3500 athletes from 80 nations will compete in 70 events involving seven sports and fourteen disciplines. Events in one sport and another new discipline are new to the modern Olympic program or have been revived for the 2002 Olympic program. Skeleton, sliding the combination luge and bobsled course head first on a "skeleton sled," will be contested in Salt Lake City for the first time since 1948 when it was included in the Olympic program in St. Moritz. Women's bobsled (2 person) is included in the Olympic program for the first time. Two hundred ten medals will be awarded. About 1.6 million tickets will be sold for 153 ticketed events.

The Paralympic Winter Games, while smaller in size than the Winter Games, will still draw 1100 competitors from 35 nations who will compete in 35 events in 4 sports between March 7 and March 16, 2002.

While Salt Lake City is the host city of the Games, the Utah Olympic and Paralympic Games will be staged in various locations throughout Northern Utah. The Olympic theater covers seven counties: Weber, Morgan, Davis, Summit, Wasatch, Utah and Salt Lake.

Events will be held in five mountain or snow venues and in five indoor or ice venues, located in five Utah counties: Weber, Summit, Wasatch, Utah and Salt Lake. Competitions are scheduled for every day of the Games. The competition venues, by international standards, are the finest facilities of their kind in the world.

Numerous non-competition venues and sites, including the Olympic Village situated at the University of Utah; Rice-Eccles Stadium, the site of the opening and closing cere-

monies for both the Olympic and Paralympic Games; the International Broadcast/Main Press Center; and other critical sites needed to stage the Games, are also located within the seven county area.

Over 133,000 people will be involved in Games activities each of the seventeen days of the Olympic Games in February, 2002. Of those, approximately 70,000 will be from somewhere other than Utah. Foreign visitors will make up a significant percentage of that number.

At the close of the sixteen days of the Winter Games and the close of the Paralympic Winter Games, approximately $1.3 billion will have been spent to stage the Games. The budget for the 2002 Games is less than what it cost to stage either of the last two Winter Games.

The Salt Lake Organizing Committee (SLOC) will use approximately 26,000 volunteers in connection with the Games.

SLOC will officially accredit over 90,000 people to the Games. About 29,000 will be foreign nationals entitled to special entry procedures developed to fulfill commitments the President made to the International Olympic Committee under the terms of the Olympic Charter.

9000 media representatives will be accredited to the Games. Several thousand people representing the unaccredited media will also come to Salt Lake City to cover the Games. Over 3 billion people, nearly one-half the world's population, will watch the events and read about them during the seventeen days of the 2002 Olympic Winter Games.

The Summer Games in Sydney were staged during the seventeen days between September 15 and October 1, 2000. In that period, 10,200 athletes representing 200 nations competed in 28 medal sports. Over 6.5 million spectators attended Sydney events, nearly 5 million at Sydney Olympic Park. Over 15,000 accredited media representatives covered the Games. Over 3.5 billion people around the world watched Olympic events on television.

The Games of the XXVIth Olympiad held in Atlanta between July 19 and August 4, 1996 involved 10,310 athletes from 197 countries competing in 26 sports and 271 events. The Summer Games held in Spain between July 23 and August 8, 1992, were of comparable size. 9364 athletes representing 169 nations competed in Barcelona in 24 sports and 257 events.

By contrast, in Lillehammer, Norway, 1737 athletes from 67 countries competed between February 12 and February 27, 1994, in 10 sports and 61 events. 2304 athletes from 72 countries competed in the XVIIIth Olympic Winter Games held between February 7 and February 22, 1998 in Nagano, Japan.

The comparative size of the Games should not be misinterpreted as an indication that the public safety requirement will be one-third of what was needed for previous Summer Games. Differences in the weather, transportation infrastructure, the size of local police and law enforcement agencies that can provide officers for duty in connection with the Utah Games, and many fiscal, political, tactical, geographic and other variables require that any assessment of public safety needs in connection with the 2002 Games be made in the most careful and informed way as it relates to the 2002 event and the risks and threats that are known or reasonably foreseeable in connection with it, not by comparison with a previous event.

[4] See Simon Reeve. *One Day In September: The Story of the 1972 Munich Olympics Massacre.* London: Faber and Faber, 2000; see also, Brigitte L. Nacos. *Terrorism & the Media: From the Iran Hostage Crisis to the Oklahoma City Bombing.* New York: Columbia University Press, 1995, 49 - 50.

[5] *See* "State Olympic Public Safety Command Act," Utah Code Ann. 53-12-101 et seq., enacted 1998.

[6] Utah Code Ann. 53-12-201(1)(a).

[7] Utah Code Ann. 53-12-102(6).

[8] Utah Code Ann. 53-12-201.

[9] Utah Code Ann. 53-12-201(4).

[10] *See* S.B. 84, 2001 General Session.

[11] Utah Code Ann. 53-12-102(3)(b).

[12] Utah Code Ann. 53-12-202(1)(a)(i).

[13] Utah Code Ann. 53-12-202(1)(a)(iii).

[14] *See* Standing Committee of Criminal Justice Chief Executive Officers, *Managing the Impact of the Sydney 2002 Games - Final Report (No. 4),* September, 1999; see also, State Olympic Law Enforcement Command, City of Atlanta Municipal Court, *SOLEC Satellite Court and Atlanta Municipal Court Olympic Operations Guide,* Centennial Olympic Games, Atlanta, Georgia, 1996.

[15] Atlanta kept no useful statistics regarding the impact on the criminal courts, municipal, state or federal, from the 1996 Summer Games. There is some anecdotal information from which it appears the number of crimes handled through the criminal justice system created for the Games was not as great as expected.

Final statistics from the 2002 Summer Games held in Sydney, Australia, between September 15 and October 1, 2000, became available in March 2001. The Olympic Intelligence Centre, the branch of the Olympic Security Command responsible for collecting, monitoring and assessing information regarding crime committed in connection with the 2000 Games, concluded that "crime rates remained steady during the Games" compared with the same period the year preceding the Sydney Games. The Centre attributes this, in part, to the "positive association between a more visible police presence and the containment of criminal activity." Olympic Intelligence Centre, *Intelligence After Action Report for the Sydney 2000 Games* (March 2001) (OIC After Action Report), 9. Olympic and Paralympic related crime was defined by the Centre as "that which posed a risk to organizations, individuals and agencies involved in or associated with the Games." *Id.* 10. The definition included "crime committed within Games venues and the adjoining common and urban domains." *Id.* 10.

Sydney, Australia and its suburbs are home to over 5,000,000 people, a little less than one-third of the total population of Australia (18,735,000). Sydney is Australia's largest city. From September 15 through October 1, 2000, it played host to over 6,000,000 Olympic visitors from all over Australia and throughout the world. Approximately 6,500,000 spectators attended Olympic events.

The Olympic Intelligence Centre found that 1018 Olympic related offenses were committed during the Olympic period, that is, between September 2 and October 1, 2000. *Id.* 10. The rate of reported crime committed during the Sydney Games was about 1 for every 6,000 visitors or 1 for every 6,500 spectators.

Most of the events contested during the 2000 Games were held in Sydney Olympic Park, a purpose built complex of stadiums and facilities for track and field, field hockey, baseball, basketball, swimming and diving, synchronized swimming, tennis, soccer, gymnastics and rhythmic gymnastics, volleyball, water polo, archery, taekwondo, badminton, handball, modern pentathlon, and table tennis, located approximately 15 km from downtown Sydney on reclaimed land that once accommodated slaughterhouses, an armaments depot, a racetrack and brickworks. *See* Patrick Bingham-Hall, *Olympic Architecture: Building Sydney 2000* (Sydney, Australia: The Watermark Press, 1999). The complex, comprising approximately 370 hectares of competition and training venues as well as the open space or "common domain" surrounding the venues was visited by over 350,000 people on most days of the Games. On September 23, the eighth day of the Games, a record 400,345 people attended events in Sydney Olympic Park.

The Olympic Intelligence Centre reports that 340 offenses were committed during the Games in Sydney Olympic Park. This amounted to around 11 reported crimes each day of the Games. Stealing was the most frequently reported crime, accounting for about 79% of all offenses committed. *OIC After Action Report,* 10. The greatest number of crimes committed in the Park were committed in Stadium Australia, the 112,000 seat venue for track and field and soccer. *Id.* 10. The common domain within Sydney Olympic Park had the next highest rate of crime in the Park. *Id.* 10.

Offenses committed in Sydney Olympic Park, along with those committed in the few other venues located outside Sydney (e.g., Blacktown baseball and softball venue, Penrith's Sydney International Regatta Centre) were handled in the Parramatta Local Court which was designated to handle crime, whether Olympic related or not, that occurred outside Sydney during the Games.

The second greatest number of offenses committed during the Sydney Games were committed in the Darling Harbour Olympic Precinct comprising the competition and training venues for volleyball, judo, fencing, weightlifting, boxing, and greco-roman and freestyle wrestling, and the public space or "urban domain" located around the venues in downtown Sydney. *Id.* 10. Of the 1018 Olympic related crimes committed between September 2 and October 1, 2000, 36% were committed in Darling Harbour Precinct. Id. 10. Stealing was, once again, the most frequently reported crime, accounting for

about 70% of all reported offenses. *Id.* 10.

The offenses committed in the Darling Harbour Precinct, along with all other crimes committed in Sydney proper, were handled in the Downing Centre Local Court which had been designated to handle crimes, whether Olympic related or not, committed in the principal urban area comprising Sydney and its suburbs.

The Downing Centre Court and the Parramatta Local Court were staffed by police prosecutors, magistrates, court and corrections personnel, and defense counsel between 8:00 am and 8:00 pm each day of the Games

Legal advice was provided to the Olympic Security Command and the New South Wales Police Service by the Legal Support Unit of the Crime Agencies (Detective) Branch of the New South Wales Police Service which was staffed twenty four hours each day of the Games.

Sydney's Kingsford Smith Airport, the entry point for the great majority of foreign competitors and visitors to the Games, reported 188 offenses during the Olympic period. Stealing accounted for 63% of the reported crimes. *Id.* 12. Assault, robbery, possession of prohibited weapons, malicious damage, drug possession, fraud and money laundering offenses were also reported. *Id.* 12.

The Olympic Village provided accommodations for approximately 25,000 people during the Games, 15,000 of whom stayed in the Olympic Village throughout the entire Olympic period. *Id.* 12. Between September 1 and October 1, 2000, 95 crimes were reported in the Village. *Id.* 12. Most of the crime was committed in the international zone and in the residential area within the Village. *Id.* 12. Stealing accounted for 59% of the offenses reported in the Olympic Village. *Id.* 12. Breaking and entering, fraud, malicious damage, trespass, and assault, including sexual assault, accounted for the remaining crimes. *Id.* 12.

The Olympic Intelligence Centre found a very low rate of reported crime during the Paralympic period, October 2 through October 29, 2000. A total of 202 offenses were reported during the Paralympics. *Id.* 11. Stealing was the most frequently reported crime. *Id.* 11.

A number of incidents involving performance enhancing drugs occurred in connection with the Sydney Games, including a customs seizure of a large quantity of banned substances from a trainer entering Australia at Kingsford Smith Airport, but none were charged as violations of Australian criminal law. Seven athletes were dropped from competition for testing positive for steroids by their national sports federations or organizations before being allowed to go to Sydney, were expelled from competition while in Sydney, or were forced to surrender medals awarded during the 2000 Games. Of the seven, three tested positive for nandralone, including C.J. Hunter, a United States shot putter. Nandralone is the most commonly abused anabolic steroid in sport. *See The Australian,* Thursday, September 28, 2000, pg. 4.

Over 100 intelligence leads concerning potential terrorist-related threats to the Games were handled by the Olympic Intelligence Centre. *OIC After Action Report,* 3. The Centre considered all leads as "legitimate risks until assessed otherwise." *Id.* 3. "Matters involving clear criminality were referred to the New South Wales Police Service (NSW-POL) Olympic Investigation Strike Force (OISF) of the Australian Federal Police (AFP) for investigation. Before any case was closed, each matter was assessed and investigated until such time as the OIC could confirm there was no extant risk to the Games." *Id.* 3. The majority of the leads handled by the Centre "were assessed to be benign in terms of terrorist risk." *Id.* 3.

A number of protest groups, including the Bondi Olympic Watch, the Olympic Impact Coalition, Greenpeace, Critical Mass, Falun Gong, Burmese opposition groups, and the Campaign Against Corporate Tyranny in Unity and Solidarity (CACTUS), announced their intention in advance of the Games to protest during the Games to get exposure and attention for their causes. In addition, several radical indigenous activists publicly promised to disrupt the Games, peacefully and otherwise. Anti- globalization protesters that targeted meetings of the World Economic Forum in Melbourne just before the opening of the Games in Sydney, indicated they would travel to Sydney to protest at the beginning of the 2000 Games. *Id.* 6.

No criminal charges were brought as a result of protests or demonstrations, however, and none disrupted the Games. Members of one activist group obtained employment in the Olympic Village to gain access to athletes to persuade them to seek political asylum and embarrass the relevant government, but they were identified early and dissuaded from activity that would have embarrassed or disrupted the Games. *Id.* 7.

[16] ACIRG stands for the United States Attorney General's "Attorney Critical Incident Response Group." After Oklahoma City, Attorney General Reno assembled several experienced prosecutors from United States Attorneys Offices around the country and from the Department of Justice, along with senior attorney managers from the Department of Justice with experience in complex, protracted and special cases, including international terrorism cases, and tasked them with handling the Department's response to future extraordinary criminal events and providing assistance to United States Attorneys in case of a criminal event like the Murrah Federal Building bombing. ACIRG is an important component of the Department of Justice Crisis Response Plan.

[17] Of the more than 90,000 people the Salt Lake Organizing Committee (SLOC) will accredit for the 2002 Olympic Winter and Paralympic Winter Games, approximately 29,000 will be foreign nationals entitled to special entry procedures developed to fulfill commitments made by the President of the United States to the International Olympic Committee under the terms of the Olympic Charter.

These special entry procedures are outlined in the amendments to 22 CFR Part 41 promulgated by the State Department for the Salt Lake Games. 22 CFR 41.101(f)(2), is a new section added to define "Olympic Family Member" and "Paralympic Family Member" for purposes of the regulation. Olympic and Paralympic Family Members will be issued an "Olympic Identification/Accreditation Card" or OI/AC that, along with a passport, will constitute the holder's visa, valid for multiple entries into the United States from January 8, 2002 until March 24, 2002, for those accredited to the XIXth Olympic Winter Games, and for multiple entries into the United States from February 7, 2002 until April 16, 2002, for those accredited to the VIIth Paralympic Winter Games. See 22 CFR 41.112(d). The OI/AC will also be the holder's accreditation to Olympic and Paralympic events.

Any violation of the Olympic and Paralympic rules that results in a person's credentials being canceled by the International Olympic Committee or the organizer voids the OI/AC. Any violation of the Olympic and Paralympic bans on illegal substances, for example, may result in the offender's OI/AC being revoked, whether the person is an athlete, trainer, coach, official or other member of the Olympic family. If that happens, the OI/AC issued to that person will be recalled. Since the person's visa and authority for being in the United States is extinguished once the OI/AC is voided, the offender will have to voluntarily leave the United States or be subject to arrest and deportation for being in the United States illegally. A similar situation will exist if an accredited person commits a crime serious enough to cause the IOC or the organizer to withdraw the person's credentials.

If the conduct that precipitates the revocation of the OI/AC is a crime for which the offender is required to answer in a criminal court in the United States, including any state or local court with appropriate subject matter and personal jurisdiction, arrangements will be made with the Immigration and Naturalization Service (INS) for paroling the person for prosecution and for filing proper detainers to ensure he or she is available for prosecution at the required time.

Fighting Back on the Internet: A Primer on the Anticybersquatting Consumer Protection Act

by Justin T. Toth

Your client, ABC Drug Company ("ABC Drug"), a nationally recognized producer of a variety of pharmaceuticals, comes to you with peculiar problem. Several years ago, ABC Drug created a web site using the domain name "www.abcdrug.com," which provides doctors and the general public with a variety of information on diseases, developments in drug therapy, and general information about ABC Drug. The web site has been quite successful, generating more than 10,000 hits per day. Several weeks ago, the General Counsel of ABC Drug received a letter from an individual in the United Kingdom stating that the individual had registered the domain names "abcdrug.net," "abcdrug.biz," "abcdrugcompany.com" and "abc-drug.com" with an U.S.-based domain name registry. In addition, ABC Drug has learned that the individual has registered the domain name "aventia.com," which just happens to be the name of ABC Drug's newest and most promising pharmaceutical drug for treating Alzheimer's disease. For a substantial fee, the person is willing to transfer the domain names using "ABC Drug" back to your client. Otherwise, the individual intends to begin using some of the names for her own purposes, sell them to ABC Drug's competitors, or create an "anti-ABC Drug" web site. How can you help your client regain control of its name and rights without paying the demanded ransom?

The Internet and the Changing Nature of Trademark Protection

Stated simply, the Internet and the exploding growth of the World Wide Web (the "Web") permanently changed the nature of intellectual property law. The Web posed a series of new problems, including the nature of Web search engines, domain names, HTML code and a variety of other nuances never contemplated by prior laws. During the 1990's, the U.S. Congress and other organizations struggled to catch up with the ingenuity of those determined to profit from the wrongful exploitation of others' intellectual property on the Web.

Prior to 1995, the Lanham Act[1] offered the primary remedy for those whose trademarks were infringed on the Web. Under the Lanham Act, a trademark holder must show that (1) it has rights in the trademark and (2) that the unauthorized use of the trademark by another in commerce will likely cause consumer confusion, deception or mistake.[2] The Lanham Act's standards are not necessarily difficult to apply to another competitor using the marks to provide similar services. The Web, however, spawned the ubiquitous "cybersquatter" – an individual less interested in offering similar goods in commerce than simply extorting payments for the potential value of a domain name. Thus, the very nature of cybersquatting frequently made it impossible to prove several elements of the *prima facie* Lanham Act case: the cybersquatter was neither using the name in commerce nor seeking to market similar goods. Instead, he or she simply wanted payment for the domain name. Commerce and communication on the Web made application of the Lanham Act inconsistent and, to a large degree, ineffective.[3]

In 1995, Congress passed the Federal Trademark Dilution Act ("FTDA")[4] which, at the time, was regarded as a superior means to combat cybersquatting and trademark infringement.[5] Unfortunately, as noted by numerous commentators and courts, the FTDA suffered from its own shortcomings.[6] The FTDA lacked clear statutory definitions of such fundamental concepts as "dilution," leaving the circuits to engage in a conflicting set of interpretations regarding (1) which marks deserved protection and (2) what conduct constituted a violation of those marks.[7] Moreover, the FTDA applies only to "famous" marks, requiring the mark holder to prove the "famous" nature of its mark.[8] And, perhaps most glaringly, the FTDA did not directly address "cybersquatting" or provide for any penalty for such behavior. As one commentator bluntly put it, "the once wildly celebrated FTDA turn[ed] out to lack much luster."[9]

The Anticybersquatting Consumer Protection Act

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President Clinton signed the Intellectual Property and Communications Omnibus Reform bill (the "Bill") into law on November 29, 1999. The Bill included a new law entitled the Anticybersquatting Consumer Protection Act ("ACPA"),[10] which had been cosponsored, in part, by Senator Orrin Hatch.[11] The legislative purpose behind the ACPA was "[t]o protect consumers and American businesses, to promote the growth of online commerce, and to provide clarity in the law for trademark owners by prohibiting bad-faith and abusive registration of distinctive marks as Internet domain names with the intent to profit from the goodwill associated with such marks - a practice commonly referred to as 'cybersquatting.'"[12] "Cybersquatting" is the practice of registering well-known brand names as Internet domain names in order to force the rightful owners of the marks to pay for the right to engage in electronic commerce under their own brand name.[13] In doing so, the ACPA drafters intended to remedy "the perceived shortcomings of applying the [FTDA] to cybersquatting cases."[14] The ACPA adds both a new cause of action and a new injunctive remedy against cybersquatters.[15]

Under the ACPA, a person is liable for civil damages if they (1) register, use or traffic in a domain name that is (2) identical or confusingly similar to (3) a distinctive or famous mark owned by the plaintiff, and (4) the person has a "bad faith intent to profit" from such activity.[16] As a remedy against cybersquatters, the ACPA is much better tailored than either the Lanham Act or the FTDA. Unlike the FTDA, the ACPA contains no requirement that the plaintiff prove "dilution" of an existing famous mark. The ACPA also adds a unique in rem jurisdiction provision to give domestic plaintiffs the ability to obtain control over their marks against international, or absentee, defendants who would be beyond the reach of U.S. courts. Each of these aspects of the ACPA is addressed below.

1. Register, Use or Traffic in a Domain Name

This standard broadens the traditional definition of a cybersquatter, which initially addressed the individual who simply registered domain names with trademarks for the purpose of selling them to the trademark holder (or its competitors).[17] The ACPA's definition includes persons who "register, use or traffic" in domain names. Thus, even the act of registering a domain name can give rise to liability if the other *prima facie* elements are present. For example, a person who "warehouses" the domain names of various companies (i.e. registers the domain names and pays the required registration fee), but otherwise takes no action with respect to the names, may be liable under the ACPA. Likewise, an individual who uses a domain name containing trademarks by establishing a website to compete with, or criticize, the trademark holder may also run afoul of the ACPA.[18] Finally, the ACPA still includes the more traditional definition of cybersquatting – those who "traffic" in domain names containing trademarks of others. In sum, a variety of conduct using domain names containing others' trademarks can result in liability under the ACPA.

2. Identical or Confusingly Similar

Although the term "confusingly similar" is not defined by the ACPA, at least one commentator has suggested that "[t]he plain language of the statute suggests a simple, direct comparison between the trademark and the domain name."[19] This is a different and presumably lower standard than the multi-factor "likelihood of confusion" test developed under the Lanham Act.[20] And, in fact, this interpretation appears to be the approach chosen by a majority of courts construing the ACPA. In *Shields v. Zuccarini,*[21] the plaintiff trademark holder owned a domain name entitled "joecartoon.com," which he alleged was infringed by the defendant's registration of "joescartoon.com," "joecarton.com," "joescartons.com," "joescartoons.com."[22] The United States Court of Appeals for the Fourth Circuit, affirming the district court's analysis of "confusingly similar," found that "[t]he strong similarity between these domain names and joecartoon.com persuades us that they are "confusingly similar.""[23] The comparison made by the *Shields* court was essentially a facial comparison of the plaintiff's marks and the defendant's domain names. The *Shields* court also found that evidence of actual confusion by Web consumers looking for the plaintiff's website demonstrated the confusing quality of the defendant's domain names.[24] Other courts have also made such direct comparisons, such as finding a Swiss defendant's registration of the terms "swix.net" and "swix.com" to be confusingly similar to a ski wax company's trademark on the term "SWIX."[25] As an interesting aside, courts have rejected the argument that different Top Level Domain names (e.g., ".net" or ".com") create sufficient dissimilarity between existing domain names and infringing, similar names.[26] In sum, it appears the key evidence to prove this element will be contained in the facial similarity between the defendant's domain name and the plaintiff's existing marks. Additionally, evidence of actual confusion by Web consumers, or others, will substantially bolster the plaintiff's position.

3. Distinctive or Famous Mark

The ACPA requires that the domain name be identical to, or confusingly similar with, a "distinctive" or "famous" mark in existence at the time the allegedly infringing domain name is

registered.[27] This is an easier standard to satisfy for the plaintiff than the "dilution" and "fame" elements required under the FTDA. Nonetheless, neither "distinctive" nor "famous" are defined by the ACPA. What does it mean, then, to be a "distinctive" or "famous" trademark? Some courts, simply examining the nature of the name and the marketplace without more detailed analysis, have found certain marks to be famous. For example, without citing any specific test to determine "famousness," one court found that "Ernest and Julio Gallo Winery" was a famous mark and that the website "ERNESTANDJULIOGALLO.COM" infringed that mark under the ACPA.[28] Other courts have suggested that the term "famous" in the ACPA should be interpreted using the statutory factors established in the FTDA.[29] "Fame under the ACPA is measured by the same 'rigorous criteria' set forth in the FTDA."[30] The FTDA sets forth a variety of factors to determine whether a mark is famous, including the extent and use of the mark, the mark's distinctiveness, use of similar marks by other parties, the use of advertising and publicity of the mark, among others.[31] Regardless, even if a mark is not "famous" by FTDA, or other, standards, the ACPA provides a lower threshold for plaintiffs to satisfy than the FTDA because it also affords protection to "distinctive" marks.

Like the term "famous," the ACPA does not define "distinctive." The term "distinctiveness" is a term of art in trademark law.[32] Distinctiveness is the degree of uniqueness, or inherent qualities, that a particular mark possesses.[33] Importantly, a trademark can be distinctive before it has been used, or is "famous."[34] Furthermore, as the Second Circuit has explained, "distinctiveness" is different from "fame": "Distinctiveness refers to inherent qualities of a mark and is a completely different concept from fame. A mark may be distinctive before it has been used – when fame is nonexistent. By the same token, even a famous mark may be so ordinary, or descriptive as to be notable for its lack of distinctiveness."[35] For example, in *Advance Magazine Publishers, Inc. v. Vogue International,*[36] the district court found that the trademarks of the magazine "Vogue" were distinctive because the plaintiff had registered the marks, used the marks for more than 100 years and spent millions of dollars promoting the marks.[37] By contrast, lesser-known trademarks are also accorded "distinctiveness" protection. The terms REDI and REDIBOOK, although not "famous" or well-known marks, were found to be distinctive marks of the plaintiff's on-line stock trading service, which it had used and promoted for 8 years.[38]

In either case, the plaintiff should be prepared to present evidence regarding its use of the mark, including length of use, advertising, unique uses, and any other evidence showing the plaintiff's particular relationship to the mark. Many marks likely will not meet the "famous" criteria set forth in the FTCA. However, much of the "famous" proof also bears directly on the distinctiveness of the mark. If the plaintiff also takes particular care to demonstrate its unique uses of the mark, the plaintiff should at least be able to satisfy the distinctiveness test.

4. Bad Faith Intent to Profit

As a practical matter, this final element frequently becomes the pitched battleground for ACPA cases. The plaintiff must prove that the defendant had a "bad faith intent to profit" from its use of the allegedly infringing domain name.[39] This is obviously a subjective inquiry into the defendant's state of mind that may be proved either through direct or circumstantial evidence.[40] Ostensibly to assist with the bad faith determination, the ACPA provides a non-exhaustive list of factors that the court may examine:

1. the trademark or other intellectual property rights of the person, if any, in the domain name;
2. the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;
3. the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;
4. the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;
5. the person's intent to divert consumers from the mark owner's online location to a site ... that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark ...;
6. the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used ... the domain name in the bona fide offering of any goods or services ...;
7. the person's provision of material and misleading false contact information when applying for the registration of the domain name ...;
8. the person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others ...; and
9. the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous....

In addition, in several seminal ACPA cases, courts have suggested that "the most important grounds for finding bad faith 'are the unique circumstances of th[e] case, which do not fit neatly into the specific factors enumerated by Congress but may nevertheless be considered under the statute.'"[41] In essence, this means a court is going to look directly into the eyes of the defendant and ask "What did you intend to do?" Almost universally, if the plaintiff is able to produce evidence that the defendant was aware of the similarity with the plaintiff's mark and the defendant intended to exploit that similarity, either through diverting Web traffic, or through a direct sale of the domain name, courts have found that the bad faith element is satisfied.[42] For example, in *Virtual Works v. Volkswagen of America,*[43] the defendant was using "vw.net" as its domain name for its own business, but had also attempted to sell the domain name to Volkswagen.[44] Unfortunately (for them anyway), the defendants admitted in their depositions that they were aware that "vw.net" would likely divert Web traffic from consumers looking for Volkswagen's site.[45] They also said they hoped that they would be able to sell the domain name to Volkswagen "for a lot of money."[46] To the court, this testimony was the talisman of bad faith - the defendants knew their domain name was confusingly similar to the plaintiff's trademark and they hoped to exploit that fact either directly, or indirectly, for profit.[47] Bad faith conduct also is not limited to trying to sell the domain name or steal Web consumer traffic. In *Morrison & Foerster v. Wick,*[48] a defendant who had created a web site using a domain name virtually identical to a law firm's trademarked name (i.e., Morrison & Foerster) was found to have acted in bad faith because the purpose of the website was to damage the reputation of the law firm and post links to anti-Semitic and racist sites.[49]

As ACPA case law has developed on bad faith, courts have also had the chance to determine what is *not* bad faith. For instance, the fact that the defendant was aware of the existence of a pre-existing trademark similar to the domain name is not, standing alone, sufficient to establish bad faith.[50] Even a domain name that essentially copies the plaintiff's trademark will not give rise to liability without additional evidence of bad faith on the part of the defendant.[51]

The ACPA also contains a "safe harbor" provision for defendants who register domain names in good faith. Namely, a court will not find bad faith if the defendant both "believed and had reasonable grounds to believe that the use of the domain name was fair use or otherwise lawful."[52] For example, in *Newport Electronics, Inc. v. Newport Corp.,*[53] the court found that evidence that both parties "possess[ed] trademark rights to some portion of the domain names" and that neither party had attempted to sell the names presented evidence of lawful use, making summary judgment on bad faith inappropriate.[54] Cybersquatters, however, should not rely too heavily on the safe harbor provision. After all, "[a]ll but the most blatant cybersquatters will be able to put forth at least some lawful motives for their behavior."[55] Aware of that possibility, one court has already reasoned that the safe harbor provision should be construed narrowly to prevent the ACPA's purpose from being undermined.[56] Consequently, "[a] defendant who acts even *partially* in bad faith in registering a domain name is not, as a matter of law, entitled to benefit from the Act's safe harbor provision."[57] Following this reasoning, once a court has made the "bad faith" inquiry and found a number of applicable bad faith factors, a court is unlikely thereafter to find "good faith" under the safe harbor provision.[58]

To satisfy the bad faith element, the plaintiff under the ACPA needs to develop evidence as outlined in the nine statutory factors. Furthermore, following the case law, the plaintiff should focus on the defendant's *intent to profit* from its registration of the domain name. Is the defendant seeking to capitalize on the goodwill associated with the plaintiff's marks by setting up a competing web site with the domain name? If so, how is the defendant doing this? Is the defendant using trademarks in its HTML code, or meta tags, which guide Web consumers to a particular web site? This is the type of evidence that points directly to the defendant's intent in registering and using the domain name.

Remedies under the ACPA

The ACPA provides for both injunctive relief and damages. The ACPA incorporates previously existing Lanham Act injunctive remedies and applies them to violations of the ACPA.[59] A court may grant the trademark owner an injunction "as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office or to prevent any violation under section 1125(a) of this title."[60] As a practical matter, this usually means the plaintiff will seek to shut down active websites using infringing domain names and will also seek the transfer of the domain name from defendant to the plaintiff.

The ACPA allows the plaintiff to make an election between actual damages and statutory damages.[61] In seeking actual damages, the plaintiff may attempt to recover the defendant's profits from the infringement, plaintiff's actual damages, and court costs.[62] More interestingly (and frequently much more useful), the ACPA gives

the plaintiff the option to elect statutory damages.[63] The plaintiff may plead for both of the damage remedies and make the actual election at any time before final judgment is rendered.[64] The statutory damage amounts are established at "not less than $1,000 and not more than $100,000 per domain name, as the court considers just."[65] The statutory damages provision gives the plaintiff a meaningful remedy against a cybersquatter who simply is attempting to extort a payment from the defendant for the domain name.[66] In terms of establishing the appropriate amount, one could make a credible argument to the court that the defendant has set the minimum amount for any statutory penalty based on the amount it has demanded for the domain name.

Jurisdiction (*In Rem* and *In Personam*)

The ACPA permits the plaintiff trademark holder to proceed either with an *in personam* action or, in the appropriate circumstances, an *in rem* action.[67] The plaintiff must choose one, or the other, because the two proceedings are mutually exclusive.[68] The *in personam* provisions permit a plaintiff trademark holder to bring an action in any judicial district which satisfies Due Process and the "minimum contacts" standards set forth by the U.S. Supreme Court.[69]

The ACPA also recognized two particular difficulties faced by domestic plaintiffs trying to pursue claims against cybersquatters. First, some cybersquatters live outside the United States and, accordingly, are beyond the reach of U.S. courts.[70] Second, other cybersquatters provide false information to the domain name registering authority, making it impossible to locate the cybersquatter in the event of a dispute. To address these very real problems, the ACPA allows a plaintiff bring an *in rem* action against the domain name.[71] This action is brought directly against the domain name itself, rather than the person who registered the domain name.

The *in rem* procedures are somewhat cumbersome and are only appropriate once the plaintiff has determined that *in personam* jurisdiction is unavailable.[72] The plaintiff may use the *in rem* jurisdiction provisions when two criterion are satisfied: (1) the trademark being registered as a domain name is a registered trademark or otherwise protected under section 43 (a) or (c) of the Lanham Act[73] and (2) the plaintiff cannot obtain personal jurisdiction over the defendant[74] *or* the plaintiff is unable, after "due diligence,"[75] to locate the defendant.[76] Courts have imposed some additional procedural requirements under this section. First, if the plaintiff is able to identify and locate the defendant, the plaintiff must also show "due diligence" in trying exert personal jurisdiction over the defendant.[77] In essence, the plaintiff must show that it has attempted to serve or otherwise obtain personal jurisdiction over the defendant.[78] It is unclear exactly what would satisfy such a "due diligence" requirement. Presumably, if the plaintiff establishes that the putative defendant is not a resident of the United States and had insufficient "minimum contacts" with the forum state, the requirement would be met.[79] Second, the plaintiff must show that the defendant is not subject to personal jurisdiction in *any* U.S. court.[80] If this standard is met, the plaintiff will be permitted to proceed *in rem* against the domain name.

From a procedural standpoint, the *in rem* action must be commenced "in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located."[81] This means that there are only a few judicial districts in which *in rem* actions may be brought. For example, the Eastern District of Virginia has seen a large number of cases due to the fact that Network Solutions, Inc., which was, until 1998, the exclusive registrar of the non-geographically-oriented Top Level Domain names, is located in Herndon, Virginia. Courts have also specifically rejected attempts by plaintiffs to expand the *in rem* jurisdiction provisions beyond the limited number of districts contemplated by the ACPA.[82]

Once the *in rem* action is filed and written notification provided to the domain name registrar, the domain name registrar deposits the domain name registrar certificate in the registry of the court.[83] This provides the court with jurisdiction over the *res* and the case proceeds forward. The registrant/defendant may thereafter file an answer, motions and appear in court to contest the *in rem* proceeding without subjecting itself to personal jurisdiction.[84] The sole remedy under the *in rem* provisions allows the court to cancel the domain name registration and transfer the name to the plaintiff.[85] Monetary damages are not available because the proceeding is against the *res* not the registrant/defendant.

Conclusion

So, what about ABC Drug Company? It appears that ABC Drug has a good case under the ACPA, depending on how a few additional key pieces of evidence fit into the puzzle. This provides a thumbnail sketch of some of the evidence that would help your client regain its trademarks on the Web. First, ABC Drug should have little problem proving the "famous" or "distinctive" nature of its name "ABC Drug Company." You should obtain copies of your client's trademark registrations, evidence of their use, marketing and other indicia of the nature of the trademark "ABC Drug." Second, although the domain names registered by the cyber-

squatter are facially similar derivatives of "ABC Drug," you should also check with your client to see if they have received complaints from consumers looking for their "abcdrug.com" site who have been confused or misdirected. Evidence of actual confusion will weigh heavily in ABC Drug's favor. Third, you should also attempt to gather evidence of the cybersquatter's "bad faith intent to profit" by seeking to sell the domain names. A letter, or e-mail, containing the offer to sell the domain names to ABC Drug, or transfer them to another party if the amount is not paid, is potent evidence of bad faith. Also, you should simply track the ACPA factors of bad faith to support this element. Finally, you should give some thought to jurisdiction and the remedy you seek. In this case, the cybersquatter lives in the U.K. and likely has never had the "minimum contacts" necessary to establish personal jurisdiction over him. Therefore, the most appropriate action may be simply an i*n rem* suit in the judicial district in which the registrar is located.

[1] 15 U.S.C. §§ 1051-1127 (1998).

[2] *Id.* § 1114(I).

[3] D. Troy Blair, *My Trademark Is Not Your Domain: Development and Recent Interpretations of the Anticybersquatting Consumer Protection Act,* 39 Duq. L. Rev. 415, 419 n.77 (Winter 2001).

[4] Federal Trademark Dilution Act of 1995, Pub. L. No. 104-98, 109 Stat. 987 (1995) (codified as amended at 15 U.S.C. § 1125(c) (1998)).

[5] Xuan-Thao Nguyen, *Blame it on the Cybersquatters: How Congress Partially Ends the Circus Among the Circuits with the Anticybersquatting Consumer Protection Act,* 32 Loy. Univ. L. Rev. 777, 777-78 (2001).

[6] *See* Blair, *supra* note 3, at 419.

[7] *See* Nguyen, *supra* note 5, at 781-792.

[8] *See* 11 U.S.C. § 1125(c).

[9] *See* Nguyen, *supra* note 5, at 778.

[10] Anticybersquatting Consumer Protection Act, Pub. L. No. 106-113, 113 Stat, 1501 (1999) (codified at 15 U.S.C. § 1125(d) (1998)).

[11] *See* S. Rep. No. 106-140, at 5 (1999).

[12] *Id.* In additional history, it was noted that the ACPA was passed because "cybersquatters have become increasingly sophisticated as the case law developed and now take the necessary precautions to insulate themselves from liability." S. Rep. No. 106-140, at 7 (1999).

[13] *Virtual Works, Inc. v. Volkswagen of America, Inc.,* 238 F.3d 264 (4th Cir. 2001).

[14] *Sporty's Farm L.L.C. v. Sportsman's Market, Inc.,* 202 F.3d 489, 496 (2d Cir. 2000).

[15] 11 U.S.C. § 1125(d).

[16] *Id.*

[17] *Virtual Works, Inc.,* 238 F.3d at 268.

[18] *People for the Ethical Treatment of Animals v. Doughney,* 113 F. Supp. 2d 915 (E.D. Va. 2000), *aff'd,* 2001 WL 957410 (4th Cir. Aug 23, 2001).

[19] *See* Nguyen, *supra* note 5, at 798.

[20] *Id.* This commentator noted that, to apply the "likelihood of confusion" analysis to the ACPA would "largely undermine congressional intent to curb cybersquatting activities." *Id.* at 799.

[21] 254 F.3d 476 (3rd Cir. 2001).

[22] *Id.* at 478.

[23] *Id.*

[24] *Id.* Other courts have also focussed on the actual confusion to Web consumers looking for the plaintiff's product or services. *See, e.g., Virtual Works, Inc. v. Volkswagen of America, Inc.,* 238 F.3d 264, 268 (4th Cir. 2001) (finding that "vw.net" was confusingly similar to Volkswagen's "vw.com" and noting actual consumer confusion).

[25] *Hartog & Co. AS v. SWIX.com,* 136 F. Supp. 2d 531, 533 (E.D.Va. 2001).

[26] *Shade's Landing, Inc. v. Williams,* 76 F. Supp. 2d 983, 990 (D.Minn.1999) ("Because all domain names include one of these extensions, the distinction between a domain name ending with '.com' and the same name ending with '.net' is not highly significant.").

[27] 11 U.S.C. § 1125(d)(1)(A).

[28] *E. & J. Gallo Winery v. Spider Webs Ltd.,* 129 F. .Supp. 2d 1033, 1035 (S.D. Tex. 2001).

[29] *Sporty's Farm, L.L.C. v. Sportsman's Mkt., Ltd.,* 202 F.3d 489, 497 (2d Cir. 2000); *see also Shields v. Zuccarini,* No. 00-494, 2000 U.S. Dist. LEXIS 3350, at *11 (E.D. Pa. Mar. 22, 2000) (following *Sporty's Farm*).

[30] *Prime Publishers, Inc. v. American-Republican, Inc.,* 2001 WL 897194, at *9 (D.Conn., Aug, 7, 2001).

[31] *See* 11 U.S.C. § 1125(c)(1)(A)-(H) (1998). In determining whether a mark is distinctive and famous, a court may consider factors such as, but not limited to –

(A) the degree of inherent or acquired distinctiveness of the mark;

(B) the duration and extent of use of the mark in connection with the goods or services with which the mark is used;

(C) the duration and extent of advertising and publicity of the mark;

(D) the geographical extent of the trading area in which the mark is used;

(E) the channels of trade for the goods or services with which the mark is used;

(F) the degree of recognition of the mark in the trading areas and channels of trade used by the marks' owner and the person against whom the injunction is sought;

(G) the nature and extent of use of the same or similar marks by third parties; and

(H) whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principle register.

Id.

[32] *Sporty's Farm,* 202 F.3d at 497.

[33] *Nabisco, Inc. v. PF Brands, Inc.,* 191 F.3d 208, 215 (2d Cir. 1999).

[34] *Sporty's Farm,* 202 F.3d at 497.

[35] *Id.* A court may also presume that a mark is "distinctive" if a registered trademark has become uncontestable through continuous use for five years. *Id.*

[36] 123 F. Supp. 2d 790 (D.N.J. 2000).

[37] *Id.* at 793.

[38] *Spear, Leeds & Kellogg v. Rosado,* 122 F. Supp. 2d 403, 406 (S.D.N.Y. 2000)

[39] 15 U.S.C. § 1125(d)(1)(B)(I).

[40] *Virtual Works, Inc.,* 238 F.3d at 269.

[41] *Virtual Works, Inc.,* 238 F.3d at 268 (quoting *Sporty's Farm,* 202 F.3d at 499).

[42] *Cline v. 1-888-Plumbing Group, Inc.,* 146 F. Supp. 2d 351, 359 (S.D.N.Y. 2001).

[43] *Virtual Works, Inc. v. Volkswagen of America, Inc.,* 238 F.3d 264 (4th Cir. 2001).

[44] *Id.* at 269.

[45] *Id.*

[46] *Id.*

[47] *Id.; see also E. & J. Gallo Winery v. Spider Webs Ltd.,* 129 F. Supp.2d 1033, 1046 (S.D.Tex. 2001) (finding that plaintiff had no legitimate business interest related to the marks and simply registered the domain name in hopes of selling it).

[48] 94 F. Supp. 2d 1125 (D. Colo. 2000).

[49] *Id.* at 1131-32; *see also People for the Ethical Treatment of Animals v. Doughney,* 113 F. Supp. 2d 915, 922 (E.D. Va. 2000) (finding that defendant "clearly intended to confuse, mislead and divert internet users into accessing his web site which contained information antithetical to and therefore harmful to the goodwill represented by the

PETA mark"), *aff'd,* 2001 WL 957410 (4th Cir. Aug 23, 2001).

50 *Cline,* 146 F. Supp. 2d at 359.

51 *Hartog & Co. AS,* 136 F. Supp. 2d at 533.

52 15 U.S.C. 1125(d)(1)(B)(ii).

53 2001 WL 897156, at *11 (D.Conn. Aug 01, 2001).

54 *Id.*

55 *Virtual Works, Inc.,* 238 F.3d at 270.

56 *Id.*

57 *Id.* (emphasis added).

58 See, e.g., *Domain Name Clearing Co., LLC v. F.C.F., Inc.,* 2001 WL 788975, at *2 (4th Cir. Jul. 12, 2001) (finding that bad faith elements precluded application of safe harbor provision).

59 *See* 15 U.S.C. § 1116(a).

60 *Id.*

61 15 U.S.C. § 1117(a) and (d).

62 *Id.* § 1117(a).

63 *Id.* § 1117(d).

64 *Id.*

65 *Id.*

66 Actual damages in such a case would be difficult to prove and unlikely to merit much pursuit.

67 15 U.S.C. § 1125(d)(1) and (2) (1999).

68 *See, e.g., Alitalia-Linee Aeree Italiane S.p.A. v. Technologica JPR, Inc.,* 128 F. Supp. 2d 340, 345 (E.D. Va. 2001) ("Further confirmation for the conclusion that *in personam* and *in rem* jurisdictions under the ACPA are mutually exclusive is found in the different remedies available under each jurisdictional grant.").

69 *Id.* § 15 U.S.C. § 1125(d)(1).

70 Courts had specifically concluded that the Lanham Act did not contain authority to bring an action based on *in rem* jurisdiction. *Porsche Cars North America, Inc. v. Porsche.Com.,* 51 F. Supp. 2d 707, 712 (E.D. Va. 1999).

71 15 U.S.C. § 1125(d)(2) (1999).

72 "This result is consistent with the settled principle that in rem jurisdiction is an alternative basis for jurisdiction where *in personam* jurisdiction is not available." *Alitalia-Linee,* 128 F. Supp. 2d at 345 n.10 (citation omitted).

73 *Id.* § 1125(d)(2)(A)(i).

74 *Id.* § 1125(d)(2)(A)(ii).

75 "Due diligence" requires the plaintiff to (1) provide "a notice of the alleged violation and intent to proceed [*in rem*] to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar" and (2) "publish notice of the [*in rem*] action as the court may direct promptly after filing." *Id.* § 1125(d)(2)(A)(ii)(II).

76 *Id.*

77 *Heathmount A.E. Corp. v. Technodome.Com,* 106 F. Supp. 860, 867 (E.D. Va. 2000).

78 *Id.*

79 *Id.* at 863.

80 *Id.* at 867.

81 15 U.S.C. § 1125(d)(2)(A).

82 *See Fleetboston Financial Corp. v. Fleetbostonfinancial.com,* 138 F. Supp. 2d 121, 124-35 (D. Mass. 2001).

83 15 U.S.C. § 1125(d)(2)(D).

84 *See, e.g., Caesars World, Inc. v. Caesars-Palace.Com,* 112 F. Supp. 2d 505, 509 (E.D. Va. 2000) (finding that "*in personam* jurisdiction cannot be based merely on an appearance in an *in rem* action"); *Harrids Ltd. v. Sixty Internet Domain Names,* 110 F. Supp. 2d 420, 421-23 (E.D. Va. 2000) (same).

85 *Id.* at § 1125(d)(2)(D).

Practice Pointers for Effective Lawyering

by Christian W. Clinger

It is often said that law school trains one to think like a lawyer, but not how to practice law. Compare legal training to other professions. When doctors graduate from medical school, they can, at a minimum, perform a physical examination. When dentists graduate from dental school, they can at least scrape some tartar from a tooth. Lawyers, by comparison, upon graduation from law school, are unlikely to actually know how to file a lawsuit, let alone try a case.

As a law clerk for the Third District Court in Salt Lake City, I asked several judges and attorneys what basic practice pointers they would pass on to attorneys, especially young attorneys. This article will present a few practical lessons for effective lawyering, arranged around three general topics: basic protocol, pleadings and motions, and court appearances.

I. Basic Protocol

Common Courtesy to the Court Clerks. Before you ever get to say the time-honored words, "May it please the Court," you will have to ask the court clerks, "May I please file this document?" or "May I please have a court date?" When I first started working for the court, I was shocked by the lack of common courtesy that some attorneys showed towards the court's clerks. Whether the clerks are at the front desk or in court, these individuals carry out essential roles in the administration of justice. The learned lawyer knows the clerks are a valuable resource. Because the clerks literally see hundreds of pleadings and cases, they often know the rules of procedure and the Utah Code of Judicial Administration better than most attorneys. As attorneys, especially young attorneys, we should demonstrate the utmost of courtesy to court staff. A negative reputation around the courthouse is difficult to overcome. I once heard a distinguished attorney remark that, "It is nice to be important, but is more important to be nice."

Respect for the Court. As officers of the court, we have a responsibility to show respect for the judge and the court. Respecting the court is not only common sense, it also part of the Rules of Professional Conduct. Third District Court Judge Ann Boyden recently taught the importance of respect as set forth in the Preamble to the Rules. The Preamble's fourth paragraph states: "A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials."[1]

All too often, in today's business casual environment, many attorneys have become relaxed in court protocol. Some examples include: sitting while speaking to the judge; approaching the bench, the jury, or the witness without asking permission; bringing food or drink into the courtroom; not turning off cell phones or pagers while in court; and finally, talking while the judge is speaking. The latter is especially troublesome for two reasons. First, it is just bad manners to talk while someone else is speaking. Second, and more importantly, the court's record becomes confusing, especially when a court reporter is making the record. It is best when only one person speaks at a time. While the court is not *per se* sacrosanct, we should show proper respect for judges and the legal system we serve.

Punctuality. One additional way to show respect for the court is to be early for court appearances. A lawyer's life is governed by time. We are always under the pressure of deadlines, whether a statute of limitations, time restrictions on motions, or the dreaded billable hour. Nonetheless, a court appearance is one instance where tardiness can be fatal to your cause. Legendary football Coach Vince Lombardi had a remarkably effective method for teaching punctuality. When traveling, the team bus always left exactly on time, and sometimes several minutes early. A rookie quickly learned that if he did not arrive early, he would be left standing alone in the parking lot, having missed the bus and all hope of playing in the game. In some situations, being late for court is like being late for Vince Lombardi's bus. If you arrive late, you may find yourself standing alone in the courtroom, only to later discover that the judge has stricken your matter from the calendar for non-appearance, or worse, entered default for failure to appear. In sum, don't just be punctual, arrive early.

CHRISTIAN W. CLINGER is an associate with the law firm of Callister Nebeker & McCullough. He is currently serving as the Treasurer of the Young Lawyers Division of the Utah State Bar.

II. Pleadings and Motions

Form of Pleadings. Legal writing is one law school subject where there is room for improvement. Lawyers should be trained how to draft pleadings, and the proper format for such documents. The Utah Rules of Civil Procedure dictate the form of pleadings. The rule states:

> All pleadings and other papers filed with the court, except printed documents or other exhibits, shall be typewritten, printed or photocopied in black type on good, white, unglazed paper of letter size (8 1/2" x 11"), *with a top margin of not less than 2 inches above any typed material, a left-hand margin of not less than 1 inch, a right-hand margin of not less than one-half inch, and a bottom margin of not less than one-half inch.* All typing or printing shall be clearly legible, shall be double-spaced, except for matters customarily single-spaced or indented, and shall not be smaller than pica size. Typing or printing shall appear on one side of the page only.[2]

While it may seem insignificant to some, the top two inch margin is important. If the top margin is insufficient, then the first few sentences will get hole-punched, or, when placed in a thick file, the first few sentences will be buried under other pleadings. This makes it difficult for the judge to read the pleading, thus reducing the effectiveness of your skillful legal writing. Also, if the pleading is not properly formatted, the clerk of the court, ". . . may require counsel to submit properly prepared papers for non-conforming papers."[3]

Additionally, all pleadings are to have a signature line on which the person submitting the pleading is to sign in permanent black or blue ink.[4] While some attorneys may prefer red, green, purple, or pink ink as a means of self-expression, many judges do not consider the court to be the proper place for such individualism.

Avoid Adoption by Reference. The pleading should contain all relevant information, with limited reference to other pleadings. Rule 10(c) of the Utah Rules of Civil Procedure permits statements to be adopted by reference in a pleading. However, the general consensus among judges is that adoption by reference should be limited, particularly where there is not an attached exhibit or courtesy copy. When writing a pleading, the attorney's number one job is to communicate the relevant facts and law to the judge. When an attorney excessively writes, "incorporated by reference as stated in the complaint" or "see Affidavit" without attaching the referenced document, the attorney is essentially asking the judge and opposing counsel to stop, put the pleading down, and look for the referenced material.

One particular case in my experience demonstrates this principle. This case involved numerous parties in complex commercial litigation, with 32 volumes in the court's file. Counsel had not submitted courtesy copies prior to a summary judgment hearing. As the Judge read the memoranda of points and authorities in support of summary judgment, he noted that there were so many adoptions by reference that there was an obvious need to refer to all the cited pleadings. The Judge and I then went on a wild goose chase hunting for all the referenced pleadings. This was not only a difficult task, but a waste of judicial resources. Neither judges nor their law clerks have the time to engage in playing "hide the issue." The most persuasive legal writing will incorporate all relevant issues, facts, and statements of law within one concise pleading.

Rule 4-501 and Notices to Submit. If the court clerks received a dollar for every time an attorney or assistant called to ask, "Why hasn't the judge ruled on my motion yet?" they could all retire early. The clerk's most common response to the above question is, "Did you file a Rule 4-501 Notice to Submit for Decision?"

Rule 4-501 of the Utah Code of Judicial Administration establishes a uniform procedure for filing motions, memoranda, and other documents as well as a procedure for requesting hearings.[5] The Notice to Submit for Decision informs the clerk that the specific motion and memorandum as well as any opposition thereto are complete and ready for a ruling. This past year, Rule 4-501 was amended. Effective April 1, 2001, "The Notice to Submit for Decision shall state the date on which the motion was served, the date the memorandum in opposition, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. The notification shall contain a certificate of mailing to all parties. If neither party files a Notice to Submit, the matter will not be submitted for decision."[6]

There is one additional caveat in regard to hearings following a Notice to Submit for Decision. The Court can either deny or grant the request for a hearing. If the court grants the request, courtesy copies of the motions, the memoranda, the supporting authorities, and all supporting documents must be delivered to the judge at least two working days before the date of the hearing.[7]

III. Court Appearances

Know Your Judge. Prior to meeting with the assigned judge for the case, try to learn his or her practice preferences. The Litigation Section of the Utah State Bar has surveyed many state judges

regarding their courtroom protocol. Their research is ongoing, and is updated periodically. Their survey results are posted on their web page at www.utahbar.org/sites/litigation.[8] If the assigned judge has not responded to the survey, the next best resource is the judge's clerk. I recommend learning how the judge conducts scheduling conferences, pretrial conferences, oral arguments, voir dire, jury instructions, and marking of exhibits. It is wise to take a few minutes to learn the judge's preferences so you do not waste the court's time or do anything to distract from your case.

Pretrial Conferences. Prior to the pretrial conference, the attorneys should meet to discuss the case one more time to see if the case can be resolved. All too often the attorneys wait until they get to the pretrial conference to try to settle out in the hall. When the court calls the case, the bailiff has to go find the attorneys. The usual response from the attorneys is, "Just give us five more minutes." As we all know, five minutes quickly turns into thirty minutes. Since most pretrial conferences are set fifteen minutes apart or on a general roll call, if you are not prepared you will delay the court's calendar.

The apt attorney knows (or at least presumes) that judges keep their calendars current. Thus, in regard to pretrial conferences, be prepared to try the case. When you come to a pretrial conference, you are essentially telling the judge that all discovery is complete, and the case is ready to be tried. In one pretrial conference an attorney was very adamant about getting the earliest possible trial date. Yet, when the judge responded, "We can start tomorrow morning," you could almost hear his jaw hit the floor. The attorney was not ready to try the case that soon. Contrary to a common misconception, many judges keep their calendars so current that they can start a trial within a short period of time. In sum, bring your calendar to court, and be prepared to try the case when you come to a pretrial conference.

Trial. When it comes time for trial, regardless of whether it is a bench trial or jury trial, the skilled attorney does everything within his or her power to make the case run smoothly. For example, when submitting a trial memorandum, the memorandum is concise and includes a copy of all cited authorities. Opening statements are brief and set forth a road map for the trial. Witnesses are ready when called. When exhibits are offered, the attorney has a courtesy copy for the judge. While many of these principles seem obvious, they are not always followed. As attorneys, we are charged with the responsibility of advocating for our client, as well as assuring that the trial proceeds in a timely manner.

IV. Conclusion

We can be better attorneys by learning proper court protocol. While law school may not have taught us how to practice, following just a few basic principles can transform us into persuasive practitioners and effective officers of the court. And, if you catch me not following my own advice, remind me to reread this article.

[1] Utah Sup. Ct. Rules of Professional Practice, Chapt. 13.

[2] Utah.R.Civ.P., Rule 10(d) (emphasis added).

[3] Id., Rule 10(f).

[4] *See* Id., Rule 10(e).

[5] Rule 4-501 does not apply to proceedings before court commissioners, small claims cases, habeas corpus, or other forms of extraordinary relief.

[6] *See* Utah Code of Judicial Admin., Rule 4-501.

[7] *See* Id., Rule 4-501(E).

[8] Click on the icon labeled *Judge's Benchbook*.

Consumer Assistance Program

by Jeannine Timothy

In September 1997, the Consumer Assistance Program (CAP) began as a new office at the Utah State Bar as well as a new concept for Utah lawyers. For many, it still is. CAP is the informal program developed to facilitate resolution of minor complaints consumers have about their attorneys. Most often, CAP aids consumers by discussing their concerns with them, informing their attorneys of those concerns, and urging the attorneys to work with the consumers to resolve the concerns. Although termed "consumer assistance," CAP also strives to assist attorneys. Through its efforts at early intervention of minor problems, CAP endeavors to resolve complaints about potential misconduct before the problem escalates into a potential disciplinary matter.

Patterned after a similar program initiated by the Mississippi State Bar, the concept of an informal office to handle less serious complaints about attorneys was still fairly new throughout the country. Since that time, however, due in large part to the networking of the Mississippi office, the number of Consumer Assistance Programs nationwide has grown to nineteen. Those states that have a Consumer Assistance Program in place include Arizona, Colorado, Florida, Georgia, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, New Hampshire, New Mexico, North Carolina, Oregon, South Carolina, South Dakota, Texas, Vermont, and Virginia. Additionally, eight other states are in the process of developing their own informal complaint office. The format of the program differs from state to state as each strives to develop procedures that best suit its needs, but the concept and purpose remain the same.

Purpose of CAP

The purpose behind CAP is two-fold. First, the program helps to improve the public image of the Utah State Bar as an organization that concerns itself with the interests of the general population as well as those of the attorneys it serves. CAP provides a process by which consumers' concerns are heard and discussed, and steps are taken to inform the attorney involved of those concerns. The process is completed when the attorney and consumer resolve the concerns. The second purpose of CAP is to lower the number of formal complaints filed against attorneys for those matters that do not rise to the level of an ethical violation or criminal action.

Before the CAP office was instituted, every complaint submitted to the Utah State Bar was processed as a formal complaint by the Office of Professional Conduct (OPC). OPC was at times overwhelmed with the number of complaints filed. Attorneys were spending time responding to OPC about the minor complaints, while many consumers were disappointed when OPC dismissed their complaints because the complaints did not rise to the level required for disciplinary action according to Utah law and the Code of Professional Responsibility. Now, when appropriate, CAP intervenes on an informal basis to help resolve problems quickly and directly with the attorneys involved. Most matters addressed through CAP are completely resolved to the client's satisfaction.

Finally, CAP directs consumers to the appropriate Bar programs when consumers need help from services other than or in addition to CAP. When necessary, CAP refers consumers to OPC, Lawyer Referral, Fee Arbitration, Unauthorized Practice of Law, and Judicial Conduct Commission.

CAP Procedure

Consumers are asked to submit their concerns in writing on a Request for Assistance form, but CAP also handles matters submitted in letter form, by email, or by telephone. CAP notifies attorneys of their clients' concerns either by written correspondence or by phone. CAP's aim is to inform the attorney of the client's concerns, and then allow the attorney to contact her client directly and resolve the issues raised. If the attorney and consumer successfully work through the problem, then CAP need not be involved further. Each consumer is advised that unless he requires further help, CAP will destroy his file after 30 days and the matter will be closed. If the consumer needs more help from CAP, he must contact CAP before the file is closed. When a CAP file is closed, the contents of the file are completely destroyed.

JEANNINE TIMOTHY is currently the Utah State Bar Consumer Assistance Program attorney. Her previous practice focused on Family Law, Wills and Trusts, and Probate.

Consumers' Most Common Concerns

Communication breakdowns make up the largest category of consumers' complaints. Most often, consumers contact CAP to complain their attorneys are not returning their calls or are not keeping them informed of the legal process in which they are involved. Consumers want to know how their legal matter is proceeding, and they want to be involved in the decision making. They want their calls returned, questions answered, and copies of documents provided. The legal arena is most often foreign to consumers, and if their perception is that their attorney is neglecting their individual matter, then they feel insecure.

Most Requests for Assistance arise from civil domestic matters. Of the 858 CAP files opened last year, 358 (42%) involved a domestic matter such as divorce, divorce modification, child custody, visitation, paternity, etc. Consumers involved in criminal matters comprise the next largest group of consumers who contact CAP. In 2000, 124 (14.5%) of CAP's files involved criminal matters.

What to Do if You Are Contacted

Most Utah attorneys have never heard from the CAP office. If, however, CAP contacts you, please remember this informal procedure strives to be very "user-friendly" and may prevent an unnecessary or frivolous formal disciplinary complaint from being filed. Cooperation from the attorneys, though not required, is always advised and appreciated. In turn, CAP will do all it can to help resolve problems raised.

If the attorney has any questions about the concerns the consumer has raised, she is welcome to contact the CAP attorney about the matter. CAP is always available to help attorneys, and CAP speaks to and corresponds with many attorneys weekly. CAP often responds back to the consumers with the information gathered from their attorneys. A letter explaining the attorney's position gives the consumer a chance to understand the big picture and gain some perspective on his legal matter.

Is CAP Helping?

Many consumers and attorneys have contacted CAP after a matter has been resolved to offer a "thank you." Numerous attorneys have stated their clients had given no indication they were confused, needed more guidance, or wanted more information from the attorneys. Without the information from CAP, the attorneys would never have known their clients had questions until perhaps the clients had become so frustrated that it might have been too late to repair the attorney-client relationship. Additionally, many consumers have expressed their appreciation of the CAP office and its informal approach to helping them resolve problems with their attorneys. Most consumers do not seek to file a formal complaint against their attorneys. CAP offers them an alternate way to notify their attorneys of their frustrations without proceeding through a formal disciplinary process.

Commission Highlights

During its regularly scheduled meeting September 27, 2001 which was held at the Brigham Young University Law School, Provo, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Scott Daniels updated the Commission on some legal developments relating to the events of September 11th. The Commission highly endorsed the new *pro bono* program assisting military personnel who are in need of immediate and certain legal assistance consisting of powers of attorney, estate planning and the like.
2. Scott Daniels reported that the Supreme Court's Rules Advisory Committee on the Rules of Professional Conduct had completed its report and recommendation as to the Commission's MDP proposal.
3. Scott Daniels provided background on the UPL developments. A copy of the most recent version of the reinstated UPL bill was distributed.
4. Denise Dragoo reported on the recent Leadership Conference.
5. John Baldwin noted that while a majority of the revisions to the Admissions Rules had already been approved, that the Admissions Committee had made some further changes that needed to be reviewed by the Commission. The Commission approved the changes as set forth.
6. Scott Daniels reported on the Executive Committee's approval of new Bar admittees.
7. Scott Daniels led the discussion on the Litigation Section's request to contribute the interest accrued on the section's funds to the "and Justice for all" project.
8. The Commission approved the idea to create a Senior Lawyer Section of the Bar.
9. Scott Daniels announced that he had chosen C. Dane Nolan to serve on the Commission's Executive Committee.
10. Nanci Snow Bockelie reported on Senator Spencer's recommendations to have complainants post bonds in order to file attorney discipline complaints and shortening the current four-year statute of limitations on filing complaints.
11. John Baldwin led the discussion of the Budget and Finance Committee's review of the audit. He distributed Deloitte & Touche's annual audit. The Commission approved renewing the audit contract with Deloitte & Touche.
12. Debra Moore reported on the most recent meeting of the Judicial Council. She noted that Judge Hilder has replaced Judge Stirba on the Council.
13. Minutes of June 9th, 2001 Pack Creek Ranch Special Commission meeting and the minutes of August 24, 2001 Commission meeting were approved.

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

Notice of Petition for Readmission to the Utah State Bar by Edward T. Wells

Pursuant to Rule 25(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of a Petition for Readmission ("Petition") filed by Edward T. Wells in *In re Wells,* Third District Court, Civil No. 970901805. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

2002 Mid-Year Convention Awards

The Board of Bar Commissioners is seeking applications for two Bar awards to be given at the 2002 Mid-Year Convention. These awards honor publicly those whose professionalism, public service, and personal dedication have significantly enhanced the administration of justice, the delivery of legal services, and the improvement of the profession. Award applications must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, no later than Friday, January 18, 2002.

1. **Dorathy Merrill Brothers Award –** For the Advancement of Women in the Legal Profession.
2. **Raymond S. Uno Award –** For the Advancement of Minorities in the Legal Profession.

Supreme Court List of October 2001 Utah State Bar Admittees

Angela W. Adams
Ronald Z. Ahrens
Cara L. Anderson
Charles P. Archer
Andrew L. Armstrong
Christian D. Austin
Tyler B. Ayers
Daniel H. Bailey
Samuel S. Bailey
Derek J. Barclay
Kyle H. Barrick
Brandon J. Baxter
Tanya G. Beard
Bryan K. Benard
Jared C. Bennett
Ryan D. Benson
Scott D. Benson
D.Scott Berrett
Jared D. Bingham
Ryan D. Bjerke
Michael D. Black
Chad A. Bowers
Christopher G. Bown
Ashby D. Boyle II
David S. Bridge
Karin A. Briggs
L. Andrew Briney
Nathan H. Brown
Julie W. Caldwell
Mark R. Carman
Allison A. Cassell
Thomas K. Checketts
Douglas A. Clark
Gabriel S. Clark
Jon C. Clark
Catherine R. Cleveland
Anneliese L. Cook
Sydney F. Cook
Kim Cordova
Patrick W. Corum
Tracy S. Cowdell
Spencer J. Cox
Candace I. Coy
Daniel R. Cragun
Leslie D. Curtis
DanaLyn Dalrymple
Ariane H. Dansie
Darren A. Davis
Perry R. Davis
Scott B. Davis
Catherine E. deGaston-Taylor
Agnieszka Dolinska
Jeffrey J. Droubay
Sean B. Druyon
Dan C. Dummar
Andrew J. Dymek
Mark D. Eddy
Terrence J. Edwards
Marie Elliott
Justin R. Elswick
Jennifer R. Eshelman
Jason P. Eves
Joshua K. Faulkner
Amy M. Felt
Lenora K. Ferro
Douglas W. Finch
Lance D. Fitzgerald
Matthew C. Fleming
Rachelle R. Fleming
Iwao Fujisaki
Jeffrey M. Gallup
Sarah H. Gerhart
Alisha M. Giles
Glenn W. Godfrey, Jr.
Corbin B. Gordon
Chad A. Grange
Theodore M. Grannatt
Kyle W. Green
Matthew C. Green
Jana L. Gunn
Joanna B. Gustafson
David R. Hall
Donald T. Hamel
Angela N. Hamilton
Ryan Hancey
Brett A. Hansen
Thomas M. Hardman
Brooke W. Harkness
Ashlee A. Hartt
John C. Harwood
Kimberly A. Havlik
David J. Hawkins
Randy R. Heiden
Angela Hendricks
Melinda C. Hibbert
David S. Hill
Erin Hill
Jon D. Hill
Michael S. Hill
Stephanie J. Hoggan
Maggie L. Hughey
Loren R. Hulse
Randy S. Hunter
Daniel V. Irvin
LeRay B. Jackson
Catherine A. James
Blair E. Janis
James L. Jaussi
Jonathan E. Jenkins
Erik N. Jensen
Kirk D. Jensen
Ryan D. Jensen
Benjamin N. Johnson
Jeffrey L. Johnson
Todd R. Johnson
Jason R. Jones
M. Kevin Jones
Sara D. Jones
Tony G. Jones
Leilani L. Judy
Tracy R. Justesen
R. Paul H. Kawai
Tige Keller
David N. Kelley
Shane L. Keppner
Dale B. Kimsey
Joel J. Kittrell
Suzy Knowlton
Jennifer R. Korb
Patricia A. Kreis
Gregory M. Lamb
Robert B. Lamb
Kristine Larsen
Kelly J. Latimer
Troy A. Little
Matthew E. Lloyd
Stephen K. Madsen
Ronald R. Madson
Jan Marshall
Clate W. Mask III
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Christopher N. Nelson
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Stephen R. Nemelka
Andrew F. Nilles
Carey B. Nuttall
Kathryn P. O'Connor
Robert G. O'Connor
Diana Obray
Marta B. Ochoa
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Matthew J. Willey
David J. Williams
Richard T. Williams
Natalie A. Wintch
Ryan V. Wood
Chad L. Woolley
John E. Wootton
Kasey L. Wright
Rhome D. Zabriskie
Trevor L. Zabriskie

Discipline Corner

ADMONITION

On August 17, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in post divorce proceedings. The client's former spouse had initiated proceedings before an out-of-state court to modify the current parenting plan. The attorney contacted the opposing party and opposing counsel in an attempt to negotiate a settlement. Opposing counsel sent the attorney a proposed plan with a request for the client's response. The attorney did not respond and the opposing counsel sent a second request for response. Thereafter, opposing counsel sent via facsimile to the attorney a courtesy copy of a motion hearing notice along with a motion and declaration of default. The notice informed the attorney that a default hearing was set. The attorney did not review the proposed parenting plan with the client until several days before the default hearing. After the meeting, the attorney informed the client that the attorney would draft the proposed changes to the parenting plan and send them to opposing counsel. The attorney did not send the proposed changes to opposing counsel until a day after the court had entered a default judgment adopting the opposing party's parenting plan, resulting in a minor adjustment to the parties' rights.

Mitigating factors include: absence of a prior record of discipline and cooperation with the Office of Professional Conduct.

ADMONITION

On August 22, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 1.15 (Safekeeping Property) of the Rules of Professional Conduct.

The Office of Professional Conduct received an overdraft notice regarding the attorney's trust account. The attorney deposited two client checks into the trust account and, without waiting for the checks to clear, issued checks from the trust account. One of the deposited checks was returned by the bank due to insufficient fund in the client's account, causing the attorney's trust account to be overdrawn.

Utah State Bar Ethics Advisory Opinion Committee

Opinion No. 01-07

Issue: Is it a violation of the ethical rules for an attorney or law firm to use trade names such as "Legal Center for the Wrongfully Accused" or "Legal Center for Victims of Domestic Violence" in selected court pleadings?

Opinion: It is not a violation of the ethical rules for an attorney or law firm to use trade names such as "Legal Center for the Wrongfully Accused" or "Legal Center for Victims of Domestic Violence" so long as the organization represents clients who claim to be in the indicated categories and provided the name is uniformly used for all such representation. Selective use of such trade names for some clients in the indicated categories but not others would violate Utah Rule of Professional Conduct 7.1(a).

Early Neutral Evaluation

by Ellen M. Maycock

Early neutral evaluation is a technique of alternate dispute resolution (ADR). As the popularity of mediation and arbitration as ADR techniques has grown in recent years, early neutral evaluation (ENE) has also grown in popularity and frequency of use.

Utah Code. Ann. § 78-31b-2(7) provides a concise definition of ENE. "Early neutral evaluation means a confidential meeting with a neutral expert to identify the issues in a dispute, explore settlement, and assess the merits of the claims." Despite the fact that ENE is specifically recognized and defined in Utah's Alternative Dispute Resolution Act, it seems to be little known and infrequently used in Utah.

ENE, also known as neutral evaluation and sometimes simply called case evaluation, can occur in many different forms. In general, ENE is exactly what it says it is, a process in which a third party neutral examines the evidence in the case, listens to the parties' positions, and then gives the parties his or her evaluation of the case. In one court-annexed early neutral evaluation program, the goals of the program are listed as: (1) to enhance communication between the parties about their claims and evidence, (2) to provide an assessment of the merits of the case by a neutral expert, (3) to provide a "reality check" for clients and lawyers, (4) to identify and clarify central issues in dispute, (5) to assist with discovery and motion planning or with an informal exchange of key information, and (6) to facilitate settlement discussions, especially when requested by the parties.

Typically, the parties choose an experienced attorney with expertise in the subject matter of the case as their evaluator. In order for the evaluation to be useful, it is essential that the parties have confidence in the judgments and opinions of the evaluator. The evaluator hosts a meeting of the clients and counsel in which each side presents its evidence and arguments informally. The evaluator then tries to identify areas of agreement, clarifies and focuses issues and encourages parties to reach stipulations insofar as that is possible.

After the meeting, the evaluator writes an evaluation in private, including an estimate of the likelihood of liability, the dollar range of damages and an assessment of the strengths and weaknesses of each party's case. The evaluator provides reasoning to support these assessments.

Depending on the procedures that the parties have agreed upon, the evaluator can then submit the written evaluation to the parties and discuss it with them or the parties can postpone receiving the evaluation to engage in settlement discussions in which the evaluator can take on the role of a mediator. Obviously, there are many possible variations on these themes. A neutral evaluation can be an extraordinarily flexible process. The parties, with the help of the evaluator, can design the process so that it provides the maximum benefit to them.

One of the main advantages of ENE is that it can provide a reality check for lawyers and parties relatively early in the case. They can get good neutral feedback about their case before they have spent a lot of money on attorneys' fees. In some cases, trying this technique too early will not work because the parties have not gathered sufficient information. Even in those cases, however, ENE may help to focus the parties on the issues that really matter and help them to plan their discovery.

ENE seems to be especially beneficial in complicated and unusual cases. Here again, a skilled evaluator can help the participants focus on the real issues, walk through the problems in their cases, and as one commentator said "tear the veils from their eyes step by step." Obviously, ENE also presents the advantage of complete privacy and quick resolution. In a business context, these advantages alone can be substantial enough to persuade parties to try the process.

ELLEN M. MAYCOCK is a founding member of Kruse, Landa & Maycock, L.L.C. She has served on the United States District Court for the District of Utah ADR panel since 1993 and has served as a mediator and arbitrator for that program.

My primary experience with ENE has been in the family law context. One of the primary problems in representing some clients in divorces is their persistent but unfounded belief that the goal of a divorce is to determine which party is the better person. Divorcing parties often have difficulty in accepting their attorneys' advice that the court in a divorce attempts to dissolve their financial partnership, provide for support and make determinations about the best interests of children, not to decide which spouse caused the divorce. ENE can provide a means to reinforce their attorneys' counsel by allowing the parties to hear from an objective third party that their attorneys are in fact focusing on the issues that a judge would focus on. The parties may then be prepared to consider settlement, taking into account the evaluator's opinions as to the likely outcome of their case.

For attorneys who believe their role is to act as problem solvers, not just as vigorous advocates for their client's position, ENE is another tool for resolving disputes without years of costly and frustrating litigation.

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LHL believes that by accepting the responsibility to help those of our members who are in need, we help to save the lives and law practices of impaired attorneys.

December 14, 2001
Co-Sponsored by: Lawyers Helping Lawyers Committee, Utah State Bar
1:00 pm – 4:00 pm
3 Hours Ethics
$60 pre-registration / $75 at the door

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Law & Technology

New liability issues created by new technology

When does the use or misuse of technology rise to the level of malpractice?

November 7, 2001
Law & Justice Center
9:00 am – 3:30 pm (lunch provided)
6.5 Hours CLE
(includes 1.5 ethics hrs. and 1 hr. self study credit)
$80 pre-registration / $100 at the door

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Join in the YLD

by Nate Alder, Young Lawyer Division President

The Young Lawyers Division (YLD) of the Utah State Bar is doing great things. The success of the YLD is the result of many volunteers who participate in – and direct – our Division. It is also a tribute to our history of strong leadership, as well as continued support from the Bar. For a young lawyer, one of the best ways to improve your skills, network, experience leadership, and generally develop as a lawyer is to participate in the YLD.

If you are in your first three years of practice, or until you are 36 years of age (whichever is longer), you are a young lawyer, and are automatically a member of the YLD. There is no fee to join. The YLD is the largest and one of the most active sections of the Utah Bar. Our members plan and organize CLEs and social events, as well as outreach to the community. We are involved in many Bar committees, and represent young lawyer interests to the Bar Commission. Our YLD Council is an energetic group of leaders. I encourage you to become an active member and join in this effort.

There are many ways you can get involved. Here are some of them:

Join a YLD Committee. Choose from any one of the committees listed below, call or write the committee leader, and get involved. My first involvement in the YLD was showing up on a Saturday afternoon to paint houses for low-income residents. I quickly became friends with a number of other attorneys whom I would not have met otherwise. That experience led to a committee position where I helped organize CLEs.

Volunteer for Pro Bono Service. One of the YLD's most important activities is the Tuesday Night Bar. This service allows members of the public to come talk to a lawyer for 20 minutes about a legal problem, at no charge, and receive some basic guidance. If you are in the Salt Lake area, come help out at the Utah Law and Justice Center where the YLD serves hundreds of people in need each month. If you are interested, please call our Tuesday Night Bar leaders, Wade Budge or Jason Perry, to volunteer. Also, you can contact Charles Stewart at the Bar for more information about pro bono opportunities in general.

Join Us This Year. The 2001-2002 year will include many big events, and offer many ways to get involved, including:

- **2002 ABA/AOP.** From March 7-10, 2002, the Utah YLD will host the ABA Associate Outreach Program (AOP) Conference. Representatives from the ABA/YLD and numerous state and affiliate YLDs from around the nation will come to Salt Lake for an educational and professional program at the Grand America Hotel. If you would like to serve on our host committee, please let us know. It will be a one-of-a-kind event, with opportunities to rub shoulders with colleagues from around the country.
- **Law Day.** We will again host the annual Law Day Luncheon on May 1, 2002.
- **Community Service Projects.** The YLD helps with "and Justice For All" and outreach to public schools and the Children's Justice Center.
- **Bar Conventions.** The YLD is involved in significant ways at both the Mid-Year and Annual Meetings of the Utah Bar.
- **CLE.** We help provide CLE opportunities throughout the year, especially those designed especially for young lawyers, at big Bar events as well as small brown bag seminars.
- ***Bar Journal.*** We are involved in providing the *Bar Journal* with timely articles, particularly those of interest to young lawyers. If you are a writer and would like your law-related work considered for publication, please contact our *Bar Journal* committee.
- **Professionalism.** The YLD has taken a leadership role on the issue of professionalism, with a committee studying ways to improve the climate of our profession.

And there are many other areas and activities in which the YLD is involved.

I look forward to serving as your YLD president this year, and encourage you to become actively involved. Our YLD Council meets the first Wednesday of the month at noon at the Utah Law and Justice Center. You are welcome to attend our meetings and provide input. The YLD is strong because our members are interested in and committed to our success. We invite you to join that great tradition. Please feel free to reach me at (801) 323-5000 or nathan.alder@chrisjen.com to discuss the YLD.

Utah State Bar Young Lawyers Division 2001-2002 Leadership

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Secretary	Scott Petersen
ABA Rep.	Amy Dolce
President Elect	Victoria Coombs Bushnell
Past President	Steve Owens
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YLD COMMITTEES

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	George Burbidge, Vice-Chair Christensen & Jensen
Bar Journal	Dave McKinney, Chair Thorpe North & Western
	Bart Kunz, Vice-Chair Christensen & Jensen
CLE	Loyal Hulme, Chair LeBouf Lamb Greene & MacRae
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	Mickell Jimenez, Vice-Chair Clyde Snow Sessions & Swenson
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Public Education	Bruce Burt, Chair Barbara Maw, P.C.
	Patrick Tan, Vice-Chair Utah Legal Services
Tuesday Night Bar	Wade Budge, Chair Snell & Wilmer
	Jason Perry, Vice-Chair Utah Attorney General's Office

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NLCLE Liaison	Chip Lyons Christensen & Jensen

MARCH 7-10, 2002 ABA/AOP UTAH LEADERSHIP HOSTS

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Message From the Chair

by Deborah Calegory

I have fielded numerous questions during my short tenure as Chair of the Legal Assistant Division ("LAD") regarding qualification for membership in the LAD. One of the following standards must be met in order to qualify for membership:

- Successful completion of an ABA approved program of education and training for legal assistants, and current employment as a legal assistant under the direct supervision of a duly licensed Utah attorney.
- Successful completion of an institutionally accredited legal assistant training program that consists of a minimum of sixty (60) semester hours (or equivalent quarter hours) of which fifteen (15) are substantive legal courses, and current employment as a legal assistant under the direct supervision of a duly licensed Utah attorney.
- Successful completion of an institutionally accredited legal assistant training program that consists of sixteen (16) semester hours of substantive legal courses, plus forty-five (45) semester hours (or equivalent quarter hours) of general college curriculum, plus at least one (1) full year of employment experience as a legal assistant under the direct supervision of a duly licensed Utah attorney, and current employment as a legal assistant under the direct supervision of a duly licensed Utah attorney.
- A minimum of five (5) continuous years of full time employment experience as a legal assistant under the direct supervision of a duly licensed attorney, which experience complies with the definition of a legal assistant set forth by the Utah Supreme Court, and current employment as a legal assistant under the direct supervision of a duly licensed Utah attorney, and having completed at least sixteen (16) hours of continuing legal education in the prior two (2) years.
- Having a baccalaureate or higher degree in any field and at least two (2) continuous years of full-time employment experience as a legal assistant under the direct supervision of a duly licensed Utah attorney, and current employment as a legal assistant under the direct supervision of a duly licensed Utah attorney.
- Successful completion of the voluntary certification examination given by the National Association of Legal Assistants ("the CLA Exam"), or a comparable examination which has been recognized in the industry for at least seven (7) continuous years, and completion of at least six (6) months of full-time employment as a legal assistant under the direct supervision of a duly licensed Utah attorney, and current employment as a legal assistant under the direct supervision of a duly licensed Utah attorney.

I also note there is a lot of confusion surrounding the terms *certified* and *certificated.* I will attempt to clear up some of the confusion.

A you can see from the above, one of the several ways a person can qualify for membership in the LAD is through a voluntary certification exam. This means "successful completion of the voluntary certification examination given by NALA (National Association of Legal Assistants), or a comparable examination recognized in the industry for at least seven (7) continuous years." These recognized certification exams are sort of mini-bar exams. The NALA exam takes two days to complete and encompasses certain basic skills common to the legal profession including written communication skills, judgment and analytical abilities, and an understanding of ethics, human relations, legal terminology, and legal research, as well as substantive knowledge of law and procedures. There is a lot of study and preparation that goes on before taking an exam. This formal certification bestows a measure of professional recognition to those who achieve significant competence in the legal field, and authorizes individuals to use the "certified" designation.

Many Utah educational facilities offer legal assistant/paralegal programs. Once the program is completed the graduate is given a *certificate.* Some refer to this as being *certificated.* This is a good starting point for getting your foot into the door, so to speak, and will definitely be helpful if pursuing formal "certification".

As legal assistants, we are an integral part of the legal services team and must strive to improve the profession through continuing education, and practical application of our knowledge and skills.

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
11/07/01	**Law & Technology: When Does the Use or Misuse of Technology Amount to Malpractice?** 9:00 am–3:30 pm. Lunch provided. eGov status, Phillip Windley CIO State of Utah; Protecting your clients information, John Rees, Callister Nebeker & McCullough; Update on products to help protect information, Lincoln Mead; On-line learning; Complex eBusiness transactions, Blake Miller, O_2 Blue Inc.; New Liability issues created by new technology, Kimberly Pihlstrom, Westport Insurance Inc., Matt Lalli, Snell & Wilmer; panel discussion. $80 pre-registration, $100 at the door.	6.5 – includes 1.5 hrs Ethics 1 hr self-study
11/09/01	**New Lawyer Mandatory Seminar: U of U Moot Courtroom.** 8:30 am–12:00 pm. $45. Pre-registration recommended.	Satisfies New Lawyer Requirement
11/09/01	**Advanced Guardianship CLE.** (Sponsored by Needs of the Elderly Committee) 8:30 am– 3:30 pm. $95 for early registration before 11/02/01, after $120. Topics: who is the client, alternatives to guardianship, how to protect your client, measuring decisional capacity or competency.	6 – includes 1.5 hrs Ethics
11/14/01	**ADR Academy Part II: Preparing to Mediate.** 5:30–6:45 pm. $30 YLD, $40 ADR Section, $50 others each session. $150 YLD, $200 ADR Section, $250 others for six part series.	2 NLCLE/CLE
12/05/01	**"Best of" Series –** 9:00 am Financial Statement Fraud: How They Do It – Gil Miller, 10:00 am. The Harvard Model to Mediation – Karin Hobbs & Jim Holbrook, 11:00 am. (NLCLE). The Fundamentals of Software Licensing – Scott F. Young, 12:00 pm. (NLCLE). Practicing before DOPL – Jennifer Lee, 1:00 pm. Re-employment after Active Military Service – Presenter TBA, 2:00 pm. Technology, Security and the Law Office – Lincoln Mead, Utah State Bar IT Director, $20 per session or $100 for all six.	Six 1 hour segments (1 NLCLE @ 11:00 am)
12/07/01**	**Last Chance CLE: Employment Law.** 11:00 am–1:00 pm. (lunch provided) $40 YLD members, $55 others. ***Change of day and hours.*	2 NLCLE/CLE
12/12/01	**Intellectual Property in Cyberspace: Internet Law 2001.** Professor William W. Fisher, Harvard Law School; Professor David G. Post, Temple University Beasley School of Law. 9:00 am–5:00 pm. $199 before December 1, after $230. Register on-line.	7
12/12/01	**ADR Academy Part III: Ethical Issues in Mediation.** 5:30–6:45 pm. $30 YLD, $40 ADR Section, $50 others each session. $150 YLD, $200 ADR Section, $250 others for six part series.	2 NLCLE/CLE
12/13/01	**Litigation Deposition Workshop: Defending Your Life.** 5:30–8:30 pm, $40 for YLD, $55 all others.	3 NLCE/CLE
12/14/01	**Ethics:** (sponsored by Lawyers Helping Lawyers) 1:00–4:00 pm. $60, $75 at the door.	3 Ethics
01/17/02	**Estate Planning Workshop: Wills and Trusts.** 5:30–8:30 pm. $45 YLD, $60 all others.	3 NLCE/CLE

Full agendas can be found for each of these programs on our web site at: www.utahbar.org/cle. Need CLE? Try an on-line course for self-study credit.

REGISTRATION FORM

Pre-registration recommended for all seminars. 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.

Registration for (Seminar Title(s)):

(1) _____ (2) _____

(3) _____ (4) _____

Name: _____ Bar No.: _____

Phone No.: _____ Total $ _____

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

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Classified Ads

RATES & DEADLINES

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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.

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For Sale: Established law practice. Office and furnishings included. Write or fax for information to: Cindy Barton-Coombs, P.O. Box 87, Altamont, Utah 84001. Fax No.: (435) 722-0218.

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Prime Ogden office space available 2 blocks from District Courthouse and county offices. REMAX building, 533 26th St. Ogden (with parking) Includes 2 suites, reception area, file room, fax and copier available. Call Pat (801) 627-9350.

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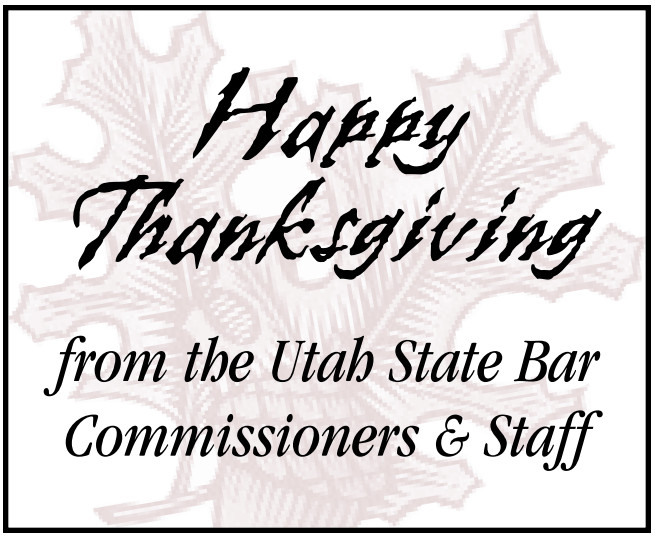

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Address:			**Telephone Number:**			
Date of Activity	**Program Sponsor**	**Program Title**	**Type of Activity (see back of form)**	**Ethics Hours (minimum 3 hrs. required)**	**Other CLE (minimum 24 hrs. required)**	**Total Hours**
			Total Hours			

Explanation of Type of Activity

A. Audio/Video, Interactive Telephonic and On-Line CLE Programs, Self-Study

No more than twelve hours of credit may be obtained through study with audio/video, interactive telephonic and on-line cle programs. Regulation 4(d)-101(a)

B. Writing and Publishing an Article, Self-Study

Three credit hours are allowed for each 3,000 words in a Board approved article published in a legal periodical. No more than twelve hours of credit may be obtained through writing and publishing an article or articles. Regulation 4(d)-101(b)

C. Lecturing, Self-Study

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

D. Live 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 fifteen (15) hours must be obtained through attendance at live continuing legal education programs. Regulation 4(d)-101(e)

The total of all hours allowable under sub-sections (a), (b) and (c) above of this Regulation 4(d)-101 may not exceed twelve (12) hours during a reporting period.

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 5-101 – Each licensed attorney subject to these continuing legal education requirements shall file with the Board, by January 31 following the year for which the report is due, a statement of compliance listing continuing legal education which the attorney has completed during the applicable reporting period.

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. In addition, attorneys who fail to file within a reasonable time after the late fee has been assessed may be subject to suspension and $100.00 reinstatement 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 Regulation 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. The attorney shall retain this proof for a period of four years from the end of the period for which the statement of compliance is filed, and shall be submitted to the Board upon written request.