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

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

COVER: Mirror Lake in the fall, Dixie National Forest by Judge Robert T. Braithwaite, Fifth District Court, Cedar City, Utah

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Letters Submission Guidelines:

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

Cover Art

Members of the Utah State Bar or members of the Legal Assistants Division of the Bar who are interested in having photographs they have personally taken of Utah scenes published on the cover of the *Utah Bar Journal* should send their print, transparency, or slide, along with a description of where the photograph was taken to Randall L. Romrell, Esq., Regence BlueCross BlueShield of Utah, 2890 East Cottonwood Parkway, Mail Stop 70, Salt Lake City, Utah 84121. Include a pre-addressed, stamped envelope for return of the photo and write your name and address on the back of the photo.

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

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

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

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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.

Letters to the Editor

I was out of town when the comments concerning reciprocity terminated. I think the idea is great except that one must have graduated from a law school which was ABA approved at the time of graduation. President of the Church of Jesus Christ of Latter Day Saints, President Hunter (now deceased) and I both graduated from Southwestern Night Law School long before it was an ABA accredited school. Therefore we would both be denied the reciprocity. Yet President Hunter had a very, very distinguished career representing some very, very important clients in the California scene and I have been a senior partner in a successful law firm in L.A. from 52 till 72 which consisted of eleven lawyers and 23 secretaries and bookkeeper when I retired. After sailing for six years I got bored and started a law firm in Hawaii which in 3 years consisted of 4 lawyers and ten ladies as secretaries and a bookkeeper. In the 50 years I have been a licensed attorney I have not had one reprimand from any bar. Yet under the proposed rules, the fact that the school I graduated from 50 years ago was not ABA approved, denies me reciprocity. Doesn't make sense. The experience and clean record ought to count for something.

As I have a service calling with the Church of Jesus Christ of Latter Day Saints and do legal work for them in Washington, Oregon, Utah and California, the reciprocity would be nice. Some provision ought to be made for such situations. I am sure there are many.

Richard L. Tretheway

The Community Legal Center Becomes a Reality Through the Efforts and Generosity of Many

By John A. Adams

This month the nation's first Community Legal Center will open its doors to the public right here in Utah. The former Morrison and Merrill Building located at 205 North 400 West is the site of the new Community Legal Center. (See photograph of building on opposite page.) The 30,000 square foot building was recently refurbished by its prior owner the Olafson Group, which generously donated $400,000 toward the $4 million project. The building was purchased in March of this year by "and Justice for all," a non-profit corporation known by most Utah lawyers as the joint fund-raiser for the state's three leading providers of free civil legal services to lower-income individuals and families – the Disability Law Center, the Legal Aid Society of Salt Lake and Utah Legal Services. Their efforts promote economic and family stability, fight injustice, and help people help themselves.

These three agencies, which have a total of 35 lawyers and 84 staff employees, last year provided legal advice or represented clients in disputes in over 21,000 legal matters. The agencies resolve serious legal problems for those with no place else to turn – the poor, ethnic minorities, seniors and people with disabilities. The building will also house two smaller volunteer-based programs, the Multi-Cultural Legal Center and the Senior Lawyer Volunteer Project. Each of these not-for-profit legal service providers has a specific mission or client base: Utah Legal Services focuses on legal assistance to the state's low income citizens, Legal Aid Society assists clients with domestic relations and domestic violence issues in Salt Lake County, Disability Law Center focuses on assistance to persons with physical and mental disabilities, the Senior Lawyer Volunteer Project assists elderly individuals with estate planning and end of life issues, and the Multi-Cultural Legal Center provides a variety of legal aid to Utah's growing ethnic communities. To their credit, the three founding groups have been a model of cooperation and innovation to improve efficiencies in the delivery of legal services in our state. Four years ago they formed the "and Justice for all" Campaign, which raises money from members of the private Bar. Utah's lawyers and law firms are among the most generous in the nation – more than $1.6 million has been raised since the annual campaign began.

Co-location into the Community Legal Center helps the agencies meet three important goals. First, 'one stop shopping' will make access to legal aid and our nation's system of justice easier for Utahns. Second, it will allow the agencies to share some staff and services to achieve efficiencies of operation. Third, it will provide greater opportunity for volunteer service by private attorneys and law students. It should be noted that two of these agencies also have offices in Ogden, Provo, and Cedar City, so that legal needs elsewhere in the State may be served.

"And Justice for all" already has raised $2.6 million of the $4 million total project cost for the Community Legal Center. Alan Sullivan of Snell &Wilmer heads the capital campaign and anticipates that commitments for the remainder of the needed funds will be obtained by the end of the year. A number of organizations and individuals already have made generous contributions, including the George S. and Dolores Doré Eccles Foundation, the Utah Bar Foundation, the Herbert I. and Else B. Michael Foundation, the Emma Eccles Jones Foundation, and the cities of Salt Lake and Murray. It is particularly noteworthy that 100% of the agencies' own employees and 100% of their board members have made donations.

The capital campaign is not specifically directed towards lawyers and law firms since the annual giving campaign that attorneys generously support is essential in meeting the agencies' operating budgets. Last year more than a third of the members of the Utah State Bar contributed to the "and Justice for all" campaign and more than $440,000 was raised to help these agencies operate and perform their vital mission. Some individual lawyers and law firms nonetheless have made contributions to the capital campaign and their support is much appreciated.

During the term of former Bar President Jim Jenkins of Logan, the Bar paved the way by contributing $60,000 in seed money to the agencies to help them study how they could use technology and joint fund-raising efforts to increase efficiency in their delivery of legal services. In April of this year the Bar Commission approved a contribution of an additional $40,000, bringing its total contribution to $100,000, to match the appropriation approved by the Utah State Legislature and Governor Leavitt. In a year of very difficult financial challenges, the Legislature and the Governor made the appropriation towards the purchase of the building in honor of their colleague, the late Senator Pete Suazo, who was admired for his tireless efforts to assure equal access to justice for all of Utah's citizens.

I salute these agencies, their directors, attorneys, legal assistants and staffs, all of whom are a credit to our profession. They are highly skilled and deeply committed professionals who labor daily in the trenches to assure that equal access to justice is realized, not just espoused. I encourage members of the Bar to visit our new Community Legal Center. You will like the physical facility, I am sure, but additionally you will be impressed, if not moved, by the good work and caring you observe. If you take me up on this invitation, I am confident that the next time you write a check to "and Justice for all" you will feel that you have contributed to something truly significant.

COMMUNITY LEGAL CENTER

Truth or Dare: Assessing the Reliability of Financial Statements in a Post-Enron World

By Derk G. Rasmussen and Joseph L. Leauanae

How important are financial statements?

To investors, financial statements are the last line of defense in protecting their investment. Financial statements are very often the only opportunity that investors are given to assess both an organization's viability and its life expectancy.

To creditors, financial statements represent the ability of an organization to repay debts. Creditors gravitate towards financial statements because they generally like to function under the principle of reciprocity: if they give it, they would like to eventually get it back.

To government, financial statements are a two-fold issue: they determine how much the IRS can levy and they also create a burden on the powers that be, through the Securities and Exchange Commission (SEC) and other similar entities, to prevent the collapse of capitalism.

To accountants, financial statements represent both a source of ongoing fees and a Pandora's box of potential liability. If financial statements issued by a CPA or a CPA firm are eventually exposed as misleading, whether intentional or not, the accountant or firm that is responsible must face the sometimes dramatic consequences.

Who is responsible for adjudicating the integrity of company-issued financial statements? In most instances that responsibility falls squarely on the shoulders of supposedly independent auditors. However, with intense competition for large audit clients, and given the potential fee generation from such long-term engagements, these accountants must face difficult ethical questions if they want to both "do the right thing" and continue to maintain their lucrative client relationships.

The Problems With Misleading Financial Statements

Misleading financial statements can take many forms. The errors or omissions may be relatively minor or they may be significant. The problem, however, is that because of the multiple interests of those who rely on financial statements, even minor errors or omissions can prove disastrous.

Investors rely heavily on the objectivity and integrity of those who prepare financial statements. When that fiduciary bond is broken, and the reliability of financial statements is called into question, any confidence that may have been invested in the reporting system is destroyed. In the eyes of the investor, if the financial statements cannot be trusted, what else might be wrong?

Both creditors and investors have similar interests in mind when they assess an organization's ability to repay debt. Since investments are the lifeblood of most companies, especially those companies that are publicly traded, the fear that financial statements may be misleading will discourage debt and equity infusions. In turn, the inability to reasonably access capital markets can seriously impair a company's ability to grow.

If the financial reporting system is working properly, the financial statements issued by a company will be reliable. If the financial reporting system is not functioning properly, then the means and

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methods to mislead are readily available to be abused.

Enron – Déjá vu in Utah

Enron may be receiving its share of publicity today, but the types of financial statement concerns that put Enron in the hot seat have been seen before. In Utah, similar issues came into play in the Bonneville Pacific Corporation (Bonneville Pacific) bankruptcy. These complex issues are rife with conflict and usually end up occupying the attention of bankruptcy court, bankruptcy attorneys, and forensic accountants.

Bonneville Pacific

In Utah, during the late 1980s and early 1990s, the alternative energy company Bonneville Pacific, and its officers, were accused of using related parties, with offshore ties, to augment or "prop up" certain sales transactions. The results of these transactions increased both the revenues and the assets of Bonneville Pacific. During the Bonneville Pacific bankruptcy proceeding, there was considerable debate over the role of related parties and who had knowledge of these related parties. Part of the debate centered on how much the auditors of Bonneville Pacific knew or should have known about the related parties.

In one transaction, Bonneville Pacific packaged interests in several alternative energy projects and sold these interests to an unrelated third party for cash and a note receivable. The cash and note receivable were then used by Bonneville Pacific to acquire a very large alternative energy project. Ultimately, it was determined that the source of the cash used by the unrelated third party to acquire the Bonneville Pacific assets came in the form of a loan from an entity with ties to Bonneville Pacific officers. It was also discovered that the unrelated third party entity with ties to Bonneville Pacific officers had received part of the money used to purchase the Bonneville Pacific assets via a loan from Bonneville Pacific itself.

The key accounting issues in this transaction, other than those pertaining to the related party, included the underlying value of the interests sold to the third party as well as the value of the large alternative energy project that was acquired. Bonneville Pacific officers argued that the value of the interests sold to the third party and the value of the large project acquired were supportable and representative of fair market value. Obviously, if this had been the case, the related party aspects of the transaction would have been less meaningful and would have fallen within the realm of "no harm, no foul." The key question that arises at this point in the analysis, however, is: what were the assets really worth at the time that the transaction was completed, and did subsequent events have an impact on the fair market value of the assets?

During the bankruptcy there were significant issues regarding who knew what and when. Had the auditors and other professionals who were retained to advise the company been informed of the transactions' true nature or did management play "hide the ball?" Were asset values inflated to allow aggressive revenue recognition or did subsequent economic events cause a decline in energy project values?

These and other questions plagued the Bonneville Pacific case. By the time that the dust settled, company officers had been sentenced to prison and the lives of many more employees, investors, and creditors had been severely impacted.

More than a decade later, the troubled specter of the Bonneville Pacific case reemerged in Houston, interestingly enough to haunt another energy company.

Enron

Enron Corporation (Enron) was formed in 1985 and grew from a small midwestern gas pipeline company into the world's largest energy trader. Although the company ran operations efficiently, it was not until after the Federal Energy Regulatory Commission initiated the deregulation of energy markets, in the latter part of the 1990s, that the spectacular rise of the Enron empire truly began.

In 1999, the Board of Directors allegedly waived ethics rules and permitted Enron's chief financial officer to keep his position while simultaneously running complex transactions through private partnerships, known as special purpose entities or special purpose vehicles (SPEs), which would buy and sell assets from and to the company. By 2001, Enron's annual report listed approximately 3,800 of these partnerships and subsidiaries, of which more than 700 were located in the Cayman Islands or other offshore financial havens.

During the period subsequent to 1999, the CFO and a few other employees allegedly became unjustly enriched, through this network of SPEs, by millions of dollars. This unjust enrichment, it is asserted, was a result of the manipulation of Enron's financial statements. During this time, the Board remained conspicuously quiet, neglecting to either monitor the CFO's activities or track his transactional profits.

As it turned out, the personal enrichment of Enron employees was only one aspect of a much more serious problem. Some of

the SPEs, including Chewco, LJM1, and LJM2, were used by Enron to enter into transactions that they either could not, or would not, consummate with unrelated commercial entities. Many of the most significant transactions were apparently designed to portray favorable financial statement results, rather than to achieve true economic objectives or to transfer risk. A number of these transactions were formulated such that, had they followed applicable accounting rules, the company could have kept assets and liabilities, primarily debt, from showing up on its balance sheet. Unfortunately, said transactions did not adhere to the appropriate accounting guidelines.

Other transactions were improperly implemented to offset losses. Transactions executed at the direction of the CFO were made on terms that were allegedly unfair to Enron and had little economic substance. The transactions allowed the company to conceal extremely large losses resulting from their investments by fabricating the appearance that a third party was obligated to pay Enron the amount of those losses, when in fact that third party was no more than a shell entity in which Enron was the primary shareholder.

In one transaction that took place in 2000, the CFO allegedly offered a group of Enron employees the opportunity to invest in Southampton Place, a partnership that provided extraordinary returns. After little more than two months, a $25,000 investment in Southampton netted the CFO approximately $4.5 million. Two other employees, investing just $5,800 each, received $1 million apiece during that same period of time.

Under escalating media pressure, the Board finally initiated an official investigation into the related party transactions. What the Board uncovered were partnerships established primarily to enrich the CFO, rather than to benefit Enron. At the time of this discovery, the CFO had already allegedly generated $30 million for his own benefit. A report issued by the special investigating panel appointed by the Board indicated that the partnership transactions had hidden huge Enron losses from the investing public and resulted in nearly $1 billion in overstated profits during the 12 months prior to the third quarter of 2001. The disclosure, which seemed to confirm that Enron's financial statements had been blatantly manipulated, triggered a drop in Enron's stock price that tragically cost shareholders and employees billions of dollars and prompted multiple congressional and federal investigations into the company's accounting practices and policies.

According to the special investigating panel report, "The tragic consequences [of mishandling the partnerships] were the result of failures at many levels and by many people: a flawed idea, self-enrichment by employees, inadequately-designed controls, poor implementation, inattentive oversight, simple (and not so simple) accounting mistakes, and overreaching in a culture that appears to have encouraged pushing the limits."

In May of this year the SEC announced that it had begun investigating the company's recent disclosure that it may have overstated the value of its assets by up to $24 billion in the last year, focusing on how the company valued everything from its trading activities to its hard assets like investments in power plants and fiber optic networks. Specifically, the SEC is seeking to determine how and when the assets to be downgraded were placed on the balance sheet, whether or not their value was artificially inflated, and which executives were involved in those decisions.

Throughout this period of alleged financial statement manipulation, the Chicago-based CPA firm of Andersen acted not only as Enron's outside independent auditing firm, engaged to ensure that the company's financial records complied with financial disclosure standards, but also as the company's consultants. This dual function, which may have subjected Andersen to a conflict of interest, is currently under intense scrutiny by Congress.

The Bonneville Pacific and Enron Connection

Most of the similarities between Bonneville Pacific and Enron are readily apparent. They were both energy companies. They both may have been engaged in a multitude of related-party transactions involving revenue manipulation and offshore entities. They were both accused of being aggressive in revenue recognition and asset valuation. And they both retained well-known CPA firms to audit their financial statements.

The CPA's Contribution to Audited Financial Misstatements

Most financial statements are compiled, reviewed, and audited by CPAs. CPAs are usually members of the American Institute of Certified Public Accountants (AICPA), a prominent and ethics-driven organization. CPAs have traditionally been a pillar of trust and respectability in the financial world.

How, then, is it possible for CPAs and CPA firms to contribute to misleading audited financial statements?

The answer, in our opinion, is due to the following: CPAs/auditors are sometimes put into a position where they have conflicting interests; CPAs/auditors do not always critically analyze the key economic and financial components of the financial statements that they audit; and CPAs/auditors do not always recognize the limitations to their own expertise.

Conflicts of interest

CPAs are sometimes asked to be both dispassionately indifferent, as an objective third party, and intimately involved, as a consultant or advocate for the company. When this conflict is extrapolated from a single CPA to an entire CPA firm, it is easy to see how independence can quickly become a murky compliance issue. This lack of independence goes some way to explaining how, even with the best intentions, such conflicts can result in misleading audited financial statements.

The AICPA mandates the following in regards to a CPA's objectivity and independence:

> Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence precludes relationships that may appear to impair a member's objectivity in rendering attestation services...
>
> For a member in public practice, the maintenance of objectivity and independence requires a continuing assessment of client relationships and public responsibility. Such a member who provides auditing and other attestation services should be independent in fact and appearance. In providing all other services, a member should maintain objectivity and avoid conflicts of interest.
>
> [Source: AICPA Code of Professional Conduct - Principles of Professional Conduct - Section 55 - Article IV: Objectivity and Independence]

As the AICPA is quick to point out, CPAs who provide audit services must avoid even the appearance of conflicting interests. According to allegations in the cases of both Bonneville Pacific and Enron, corporate management and the companies' independent auditors were far too closely aligned.

In attempting to retain large clients and the associated fees generated in servicing them, independent auditors can often have their objectivity impaired by loosening the restrictions that should govern their audits, effectively granting leniency in the way that the company being audited accounts for financial transactions. It is this leniency and those financial transactions that later come back to haunt both the company and its auditors.

Further weakening auditors' objectivity is the fact that fees generated under the umbrella of consulting services often have the potential to be far greater than those generated under the provisions of standard audit services. This realization leads auditors in many instances to "give away" audit work in order to capture increased corporate tax and consulting services. In our opinion, if CPAs act as both consultants, who are often integrated into the corporate framework, and independent auditors, who are supposedly disinterested, such positioning will lead to the conflicts of interest warned against by the AICPA. When conflicts of interest arise, CPAs are often faced with ethical decisions. Unfortunately, these ethical dilemmas are not always resolved on the side of caution.

Failure to critically analyze

Contemporary audit training has consistently emphasized adherence to an audit program, or a checklist that must be "ticked and tied" to a company's financial statements during the performance of an audit. This type of audit training, however, has been carried out at the expense of more comprehensive techniques that focus on analytical thinking and critical analysis. Without analytical thinking and critical analysis, how can auditors substantively

determine that the financial statements being audited are not misstated or misleading? It is our opinion that sound analytical thinking should be the guiding force behind Generally Accepted Accounting Principles (GAAP).

Winston Churchill once said, "Give us the tools, and we will finish the job."

Unfortunately, although some might disagree, the value of the finished job is often dependent on the quality of the tools used to complete it. In the current accounting environment an auditor is generally shipped to the front lines after only a minimal amount of formal audit training. Most of their hands-on training takes place at the client site, where the effectiveness of the auditor will be dependent on the effectiveness of their instructor. Without specific training in the science and art of analytical thinking and critical analysis, an auditor cannot be completely effective. Since not all audit partners and managers are created equal, not all neophyte auditors receive the effective training that they need.

In addition to training deficiencies, common mistakes of logic and laziness also serve to impair the execution of certain audit engagements. Looking beyond the quantitative aspects of an audit, there are many times when things just "don't feel right." Those are the instances when an auditor, possibly without recognizing it, has subconsciously applied analytical thinking and critical analysis.

If auditors could be trained to cognitively use these skills – which in turn would improve their ability to adequately observe, understand, and process misleading representations on the financial statements that they audit – the quality of many audits would improve dramatically. Analytical thinking and critical analysis are skills embedded in legal training; these skills should also be cultivated in the training of accountants.

Put succinctly, effective training should allow auditors to answer the question: does this make economic sense? Sometimes it is possible to have technical compliance with GAAP and still miss the mark, such as when an auditor verifies that a sales transaction is adequately collateralized but ignores the fair market value of the assets being acquired. These oversights of form over substance only weaken the effectiveness of an audit.

If current audit training and the standards that govern audit requirements can be modified to incorporate more analytical thinking and critical analysis, a number of prevalent mistakes could be avoided, and auditors will be better prepared to analyze the economic aspects of a financial statement, rather than just the formulaic conformance of a financial statement to predetermined criteria.

Not recognizing limitations to expertise

Sometimes, however, avoiding conflicts of interest and applying analytical thought and critical analysis are not enough. Many audit engagements involve complex issues that often fall outside the realm of auditors' expertise. Even though many large CPA firms have the in-house ability, outside of the audit department, to address these issues, they are required to avoid even the appearance that conflicts of interest exist. Therefore, in order to avoid perceived conflicts of interest, auditors must assess the limitations to their expertise and, if necessary, have complex issues that exceed their expertise be resolved by qualified professionals who are not associated with their firm. Examples of these types of issues include conducting business valuations that may involve the appraisal of subsidiaries, and applying forensic accounting specifically for purposes of reconstructing financial statements or identifying fraud.

The examples listed above were key issues in the Bonneville Pacific and Enron cases. The value of energy projects at various points in time was an important criterion in determining whether or not the financial statements were misstated or misleading. Had these projects been valued at the time by a professional who was proficient in the appraisal of income producing energy projects, these misstatements may have been avoided.

Identifying that conflicts of interest, the failure to critically analyze, and not recognizing limitations to expertise can be primary factors in the failure of an audit is helpful. But unless we capitalize on this knowledge to prevent situations like Enron from happening again, they will.

CONCLUSIONS

Without fundamental changes in how audits and related consulting services are sold, maintained, managed, and performed, the quality of audited financial statements will not improve. If the checks-and-balances system that is the contemporary audit process is allowed to continue unabated and uncorrected, the troubled specter of Enron will return, again.

Lip Service and Diversity in the Legal Profession: Time for A Reality Check

by Diane L. Abraham

The American legal system has been marked by racial injustice and gender bias, beginning with our nation's foundation. Because of these very genuine inequities, the law becomes a paradigm of exclusion rather than empowerment for many practitioners as well as those seeking a just remedy through the courts.

From James Madison's milestone debate at the 1787 Constitutional Convention to landmark United States Supreme Court decisions such as *Brown v. Board of Education,* the legal profession is a vital player in shaping our national history. Indeed, the law itself writes the script for the ongoing American drama. Legal practitioners and jurists serve as the seminal connection between society and the law. This means that attorneys and judges possess the power and responsibility to cautiously exercise that power, to humanize or dehumanize our legal system. We can be either the providers or precluders of equal access to justice for minorities and women, both in the practice of law and in the society the law serves.

America is growing into the 21st century. The legal community, however, is in danger of losing touch with reality because it simply fails to bear any resemblance to the national population. This dichotomy is predicated by the profession's failure to eliminate gender and racial inequality based on bias and stereotyping. Put into current perspective, the U.S. Census reports that America is a racially diverse nation made up currently by 30% people of color, and approximately 51% female. Projections are that as a nation, minorities will comprise 50% of the population by the year 2050. In California, that percentage is predicted to be met before the end of the current decade. Yet the law lingers like a fossilized dinosaur as a profession controlled by a largely white male force of attorneys and jurists. Statistics show that 90% of the legal community is white and, of that, more than 70% are white men. This obviously is a perverse reflection of what America is and will become in the next fifty years.

The time to stop paying lip service to achieving diversity in the legal profession is long overdue. As Lazarus Long stated, "a generation which ignores history has no past – and no future." Our profession, in the pursuit of justice for all races and both genders, must not ignore the past, but address it head-on. This is critical not only to align the legal community with the general make-up of the population, but also required for fundamental ideals of fairness. Attorneys and jurists should be hired, appointed, elected, reviewed and promoted on the basis of ability instead of DNA predisposition and skin color.

Likewise, the people served by the legal profession must be treated without bias because of what they look like. They must be served by addressing the merits of valid legal claims. For all who participate in the legal process, the appearance of justice is as important as justice itself. But justice will continue to elude participants and our communities at large if the legal profession itself engages in overt and subtle forms of gender-bias and racist conduct.

Justice Harry Blackmun stated: "in order to get beyond racism and sexism we must first take account of race and gender. There is no other way . . . we must treat them differently. We cannot – we dare not – let the equal protection clause perpetuate racial and sexual supremacy." Indeed, to allow the equal protection clause of the U.S. Constitution to continue bias of any sort would be an outward perversion of its intent. Yet in recent years, the nine-member panel of the U.S. Supreme Court has restricted civil rights for minorities and has ruled against plaintiffs claiming discrimination in employment cases. For example, in January 2000, the Supreme Court undercut the authority of the Justice Department under the Voting Rights Act in a case which sought to block white bureaucrats from adopting electoral plans which were unfair to black Americans. Proof of a "discriminatory purpose" was not enough to block such a plan from taking effect. *Reno v. Bossier Parish School Board,* 528 U.S. 320 (2000). In another case, which has an obvious adverse legal impact on women, the Court struck down the section of the Violence Against Women Act allowing female victims of sexual assaults to seek

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recompense from their attackers in federal court. Justice Rehnquist said that Congress' power to protect a woman's civil rights does not extend to "purely private" acts of violence that do not cross state lines. That decision in *U.S. v. Morrison,* 529 U.S. 598 (2000) probably dooms prospects for enacting a national Hate Crimes Act.

Another Supreme Court decision, *Board of Trustees of the University of Alabama v. Garrett,* 531 U. S. 356 (2001) ruled against a woman claiming discrimination when she was demoted after treatment for breast cancer, tossing out her suit in its entirety. These cases demonstrate the continuing need to proactively make the judicial system a place where bias is replaced with equal justice. Deborah Rhode, chair of the American Bar Association's Commission on Women in the Profession properly asserts, "As gatekeepers of our nation's justice system, lawyers should be trailblazers in promoting equality."

Recognizing that disparate treatment between the races and the sexes exists is the fundamental beginning toward ending the problem, but it is only the first step. Bar associations should develop task forces to solely address diversity. One of the first law-based organizations addressing the treatment of women in the legal profession was established in 1974 by the Association of Trial Lawyers of America (ATLA). The Womens Trial Lawyers Caucus seeks to diversify ATLA's membership, since women today still comprise only 16% of ATLA's membership.

Another group, created in 1987, is the American Bar Association's Commission on Women in the Profession. Its original purpose was to assess the status of women in the legal profession, and now it serves as a national voice for women lawyers. The Commission emphasizes that although there is some progress concerning employment diversity, equally-qualified women who practice law continue to be paid significantly less than male counterparts. The promotional stratosphere between men and women in the law is also an enormous gulf. Polls continue to demonstrate that women are losing ground in both equal treatment and pay equity. (*American Bar Journal,* September 2000). Many state bar polls reflect the same findings. In California, the state bar survey shows that today 68 percent of California's attorneys are white males. (*California Bar Journal,* September 25, 2001). Only 15.50 percent of the women attorneys in Oregon became partners in firms. (*Oregon State Bar Bulletin,* January 2002).

The numbers for minorities in the profession also show a chasm which demands correction. The total minority representation in the legal profession is about 10 percent, a figure obviously disproportionate to the general population, and one which is significantly lower than other professions. While the proportion of law students of color has doubled since 1986, minority law school enrollment has increased only 0.4 percent over the past six years – the smallest increase in 20 years. (*Bar None, Lawyers for One America,* 2000). Similar statistics are found on a statewide basis. In California, notably one of the nation's most diverse states, minorities make up only 17 percent of its attorneys. (*California Bar Journal,* supra). Less than 3 percent of all partners in law firms are racial minorities on a national basis. In Oregon, attorneys of color comprise a mere 2.66 percent of partners in law firms in the state's largest city, Portland. (*Oregon State Bar Bulletin,* supra).

The most powerful tool to effectuate diversity is to eliminate stereotyping and bias at its roots so that it is not given the opportunity to develop. This requires education. Every member of our profession, from law students to jurists must be enlightened in the area of racial and gender diversity. Law firms and bar associations must go beyond their own doors – inside of which diversity in hiring, retaining, promoting and recruiting practices should already be implemented – to support at least one law school scholarship program furthering diversity. Attorneys in all sectors of the profession should also affirmatively seek associations and law schools with mentoring programs which make diversity a goal.

Further, we should be proactively urge Congress to fully fund the Thurgood Marshall Legal Educational Opportunity Program, demonstrating a commitment to provide equal opportunity for students of color to pursue a legal education.

Education of the legal community must also include mandatory continuing legal education courses in diversity training and eliminating bias. State bar associations must also include specific requirements for jurists to comply with similar protocols so that courtroom demeanor is free from racial and gender-biases, and creates an honest reflection of justice.

The hurdles are clear: overcoming ignorance and ingrained notions from generations which had limited vision of who could best hold the scales of justice will take time. Nonetheless, we cannot succumb to the perils of complacency, allowing these preconceived ideas of what an attorney looks like by gender or race to continue. Diversity must be a goal we pursue as people sworn to uphold a Constitution which decries discrimination. Remaining uninformed gives rise to inexplicable and irrational bias. Our society and profession simply have no room for this. We are players with different instruments in a legal orchestra, with similar goals to pursue justice and defend liberty. Gender and racial equality in the legal community better reflects our national population, and is the best way to accomplish that which we swore to uphold the moment we took our oaths as attorneys.

Common Errors in Cross-Examination, or Five Bad Habits of Highly Ineffective Cross-Examiners

by Robert B. Breeze

I got my first up close exposure to skilled cross-examination during a federal drug trial where my client was convicted – even though he was twenty-five miles away from the cocaine, and even though his co-defendant (who rented the car where the kilos were found, was driving the car when the kilos were found, and had cocaine in both his wallet and front pocket) was acquitted.

While working on the appeal, I kept asking myself, "How could that jury acquit the obviously guilty defendant and convict my obviously innocent (yeah, right) client?" As I reviewed the trial transcripts, the answer gradually began to emerge. The co-defendant's attorney, Ms. X, was very skilled. Although she handles mostly domestic relations cases, her first love is criminal law. In my opinion, she made her case, and won an acquittal, based entirely on skillful cross-examination.

As a result, I was motivated to attend some training on the art of effective cross-examination at out of state seminars. They were expensive and time consuming, but also very helpful. After each training, I would re-examine the transcripts of that federal drug trial. I noted how the excellent cross-examination conducted by Ms. X was really just an adept implementation of the techniques taught at these seminars and training sessions.

The following is a discussion of five mistakes lawyers commonly make that can result in less than effective cross-examination and, frequently, a devastating loss for the client.

1. **Failure to read and study the techniques taught by Larry Pozner, Albert Kreiger, Terrance MacCarthy and the National Criminal Defense College.**

I leave out the citations based on my feeling that anyone who cares enough to learn should and will find their own way.

2. **Failure to set goals.**

The lawyer should ask himself/herself some simple questions like, "Why am I here?" and "Why am I doing this?" If you know where you are going before you begin, you might end up with a couple of benefits. First, you are forced to prepare early for the eventuality of a real trial. Second, you can avoid a situation where you keep telling yourself, "Gee, I wish I had done that early in the case." In a felony criminal case, the first opportunity for cross-examination is the preliminary hearing. As the preliminary hearing date approaches and the above questions are asked, the lawyer might say something like, "I'm doing the preliminary hearing because I want to get sworn testimony that establishes facts I can use at the suppression hearing and/or trial."

For example, if you are fairly certain that your client only consented to the search following threats from the police that the children would be taken away by DCFS unless the client allowed a search, you might want to fashion a cross-examination that will set testimony relevant to voluntariness in concrete at the preliminary hearing. If you wait until the suppression hearing, you may not get what you want from the witnesses. After all, you have to file a motion and a memorandum in order to even get a suppression hearing, and chances are that the prosecutor will share your memorandum with the government witnesses – thereby either wittingly or unwittingly leading those government witnesses to tailor their testimony. Chances are that you can use surprise to your advantage early on before the issues become formulated. If you've already established the winning facts at the preliminary hearing (complete with a transcript) you know that you can elicit the winning facts at the suppression hearing or trial.

In order to cross-examine effectively at the preliminary hearing in anticipation of a trial, you better have a good idea about what the key issues will be at trial long before the preliminary hearing. A good way to narrow the issues and help you focus your efforts is to get the jury instructions (or at least a close approximation) ready within a couple of days of accepting your retainer. I know you're thinking, "That takes a lot of work and maybe the case won't even go to trial." A simple way to get a lot of instructions

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quickly is to get on the legal research computer and find an appellate decision on a recent similar case that went to trial in your area. Then go to the clerk's office and voila: you can get the defendant's proposed, the government's proposed and the court's instructions in about five minutes for a small copying fee. Now you've got fifty to eighty instructions. Read all of them and pull out those four or five instructions that cause you to say to yourself "Hey, this is going to be really important if this case goes to trial." Perhaps those are instructions on mere presence, lack of knowledge, nexus and the elements of the crime.

Now you've got a good idea of what is going to matter at trial because you've already done a thorough investigation, interviewed (and tape recorded) every witness and obtained photographs of the crime scene, right? And the preliminary hearing is still six weeks away.

Now you can prepare your cross-examination with a goal, i.e., getting the prosecution witnesses to admit, under oath, every fact you are going to need to win at trial, such as "Yes, there were nine illegal aliens at the residence at the time of the search"; "Yes, the drugs were found in a common area"; "Yes, your client never made an incriminating statement of any kind"; "Yes, your client denied any knowledge of the presence of the drugs"; "Yes, your client had pay check stubs showing full time employment"; "Yes, your client was totally cooperative and was not one of the people who fled out the back door at the first sign of the police"; "Yes, it's true we found nothing linking your client to the drugs"; and "Yes, it's true, the two people who ran out the back door had criminal convictions for prior drug crimes and both of their fingerprints were found on the baggie, and their location documents were found in a different bedroom from that occupied by your client."

Every fact that you would like to set forth in your closing argument to the jury at trial can and should, if possible, be elicited from the witnesses at the preliminary hearing. I can hear you saying, "But the prosecutor only calls one or two witnesses at the preliminary hearing." My only response is, "You've got subpoena power and, after all, your client paid you a $5000 retainer. Get out there and do the job."

3. Failure to write out questions.

You can tell a really ineffective lawyer because he spends his time during direct examination writing down the questions asked by the prosecutor, and maybe some lame cross-examination questions, instead of listening and observing. Shouldn't the defense lawyer already know exactly what the prosecutor is going to ask

each witness months before the proceeding? Shouldn't he already have the full interrogation in his file when he gets to court? I mean, prosecutors can be dumb, right? Don't they ask the same questions every time they go to court? "What happened next?" and "Then what happened?"

Writing out your cross-examination questions in advance helps you in a number of ways. First, it forces you to think about the issues, look at the law closely and focus your thoughts. Secondly, we are all human and can make mistakes. How many times have you walked out of court and said to yourself, "Oh no, I should have asked this and I should have asked that; I was going to, but then it slipped my mind"? I have heard a lot of excuses for not writing out the questions, but they all come down to the same thing: excuses for laziness. Equally important is to note the location of the impeachment material right next to the question in bold face so that you can read it. You do have impeachment material for each question, right? When the witness balks, you can march right over to your file box and immediately obtain the impeachment material. "You know a police report is an official record"; "You know that it is a crime to falsify official records"; "You would never falsify an police report, isn't that true?"; "When you wrote this police report you were complete?"; "Thorough?"; "Accurate?"; "Officer, showing you your own police report, isn't it true that you stated you were not present when Officer Jones was interviewing my client?"; "Now asking you again, isn't it true that you were not present when my client was interviewed?"

Nothing looks worse or is more embarrassing than a lawyer who has to fish around in the file for five minutes looking for an impeachment document (which he may or may not find) while everyone sits around twiddling their thumbs – except of course, the judge, who just keeps getting madder and madder, spending the whole time thinking about ways she can harm your client. You are aware that some jurors will convict or acquit based upon whether they like or dislike defense counsel. Don't make the jurors hate you. Don't waste their time. Yes, I know. You are an important person and you graduated from law school. But the jurors don't care and they probably started off the trial hating you just because the judge called you, "Defense counsel."

4. Failure to narrowly tailor questions.

Another benefit of writing out your questions in advance is that you have the ability and the time to formulate the verbiage to your client's best advantage. Trying to wing it just doesn't fly. If you prepare in advance, you can take as much time as needed to formulate the perfect questions and the perfect order. Trying to come up with the perfect question in two seconds does not usually work. Another reason to write out the questions is to avoid the possibility that you might blow it and ask an open-ended question. Observe two variations of the same general question which result in two totally different responses and results for the client. "Q: You went to the home because you were dispatched to that location, right? A: Yes" versus "Q: Why did you go to the home? A: Because your client had raped the daughter, stabbed the grandmother and kicked the pregnant mother down the stairs and they needed my help."

Narrowly tailoring the question is just another way of saying that the question must be formulated in such a manner and through such a technique that there is only one possible answer. If you read the authorities cited in paragraph one you will learn that answer.

5. Failure to force the correct response.

If the witness waffles, you must impeach. After all, you wouldn't have even bothered to even ask the question unless you had the impeachment material at your finger tips, right? You do have impeachment material right? Indexed? Impeachment is witness control. After you have effectively controlled most witnesses once or twice, they will almost always respond like well-trained animals (although young, aggressive police officers may have to be impeached five or six times before they learn the lesson). After all, if the witness only has two options, "say what you want him to say" or "be exposed and degraded as a liar in public," chances are the witness will choose the former. For more on this read Posner.

In any event, once the witness is sufficiently well-trained you must not leave the icing off the cake. Proceed to make him answer correctly. Letting witnesses off the hook creates bad habits. They will think they can mess with you. The proper sequence is: cop tells lie, defense counsel impeaches, defense counsel forces the correct answer, then move on to the next question. Impeachment is nice, but the real purpose is to get the correct answer. So, don't give up until you've got it.

I don't claim to be great at cross-examination, but I do claim to be much better than I was before I learned some technique. Cross-examination is an art that can be developed only through study, hard work and repeated practice. Study the experts, work hard preparing, and you and your client will enjoy the benefits of your effort.

Recent Changes to Utah's Trust Deed Statutes

by Scott Lundberg

During its past two regular sessions, the Utah legislature enacted two bills (S.B. 53 (2001) and H.B. 44 (2002)) substantially modifying the statutes governing trust deeds. This article is intended to provide some background for these bills and give a brief overview of the significant changes involved.

Background.
Utah's trust deed statutes were first enacted in 1961. During the ensuing four decades, the real estate lending arena, like most things, changed significantly. In the spring of 2000, several attorneys with foreclosure practices met to discuss the possibility of updating the statutes governing trust deeds to address aspects of the then current law that were felt to be either outdated or needing improvement. In addition, during recent years, foreclosures were increasingly being conducted in Utah by out-of-state, non-qualified trustees using 'agency' arrangements. Several out-of-state trustee companies, and even some mortgage lenders, which did not otherwise qualify as trustees under Utah law, entered into arrangements with local title agencies pursuant to which the title agencies would serve as the nominal trustees in order to meet the statutory requirement. The actual handling of the foreclosure, though, was done by the out-of-state company. That practice not only violated the statutory limitation on trustee qualification, but it increasingly became the source of difficulty and delays for borrowers seeking to reinstate or payoff defaulted mortgage obligations and third parties interested in pending foreclosure proceedings.

S.B. 53 (2001), sponsored by Senator Michael Waddoups, was the result of efforts to improve the existing statutes and stop out-of-state, non-qualified trustees from handling foreclosures in Utah. Additional concerns with the qualifications of trustees conducting of trust deed foreclosures and the handling of residential trust deed foreclosures resulted in H.B. 44 (2002), sponsored by Representative David Clark.

S.B. 53 Changes.
Trustee qualification. Section 57-1-21[1] was amended to require that only Utah resident members of the Bar and title companies could serve as trustees for purposes of handling foreclosure proceedings.[2] In addition, subsection (4) was added to section 57-1-21 to address the situation where a deed of trust does not name a trustee or names a non-qualified trustee. Prior to the enactment of S.B. 53, failure to include a qualified trustee in a deed of trust could have resulted in a determination that the lender holding the deed of trust had no lien on the property or, at best, that the lender would have to foreclose its lien judicially. The statute now provides that the failure to name a qualified trustee doesn't invalidate the lien. It merely requires that a qualified trustee be appointed before non-judicial foreclosure proceedings may be employed.

Section 57-1-21.5 was added to ensure that certain core duties of the trustee would not be delegated. This was intended to specifically address the practice of out-of-state, non-qualified trustees using agency agreements to get around the trustee qualification requirements.

Substitution of Trustee. Prior to the enactment of S.B. 53, the statute stated that an appointment of a substitute trustee would not be effective until it was, not only executed and acknowledged, but, actually recorded. That requirement was removed and a provision added that allows the holder of the deed of trust to ratify any action taken by the new trustee prior to the recording. Also, to deal with issues arising out of situations where trust deed property straddles county lines, the recording requirement for substitutions was modified to clarify that they must be recorded in each county in which the trust deed property is situated.

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Advertising Foreclosure Sales. Section 57-1-25 was modified to change the requirement that a notice of foreclosure sale be posted in three public places in the county. The absence of better definition in the prior statute often resulted in postings being made on three telephone poles in the county. It was felt that that did little to provide interested parties with information about pending sales. So, it was replaced with a requirement that the notice be posted at the county recorders' offices, providing a clearly identified and fixed location where interested parties can find information about upcoming sales. In addition, the recommended language for the notice of sale was modified to require disclosure of the names of the current owners of the property being foreclosed, in addition to the names of the original borrowers, if different from the current owners.

Conducting Foreclosure Sales. The prior statute allowed only a single postponement of a scheduled foreclosure sale for a period not to exceed 72 hours. That often resulted, unnecessarily, in the trustee having to completely re-do the posting and publication in order to extend the time for the sale to allow a borrower to cure the default or work out some other arrangement with the lender. That frequently led to lenders' unwillingness to allow a postponement that could benefit the borrower. The revised statute now gives the trustee the flexibility to postpone the sale up to 45 days without the requirement of re-publication and re-posting.

S.B. 53 also affirmatively allows a trustee to "strike off" a foreclosure sale to the next highest bidder in the event that the highest bidder fails to produce the funds to pay the bid amount. Although some trustees had followed that practice, there was previously no specific statutory authority for that.

Additionally, at the request of the Utah Board of Realtors, the language of the statute governing the location of the sale was modified to allow the sale to occur at either the county courthouse or, subject to certain qualifications concerning the notice, at the location of the property being foreclosed.[3]

Requests for Notice. Title companies' input on S.B. 53 can be found in a change affecting the provision for requesting notice of foreclosure proceedings. Many lenders making 2nd mortgage loans on real property previously employed the practice of including a request for notice in the body of their 2nd deed of trust. To avoid the risk of overlooking such a request, the legislation now requires that a request for notice recorded by a junior lienholder or other interested party must now be set out in a separate recorded document.

Also, the requirement that a notice of default be published within 10 days if no address for the borrower is set out in the deed of trust and no request for notice has been recorded by the borrower was changed. In such an event, the statutes now give the trustee 15 days and allow the trustee to either post the notice on the property or mail the notice to the borrower at the property address.

Effective Time of Sale. Several bankruptcy court decisions previously held that the filing of a bankruptcy petition by a borrower, subsequent to the completion of a foreclosure sale, but prior to the recording of the trustee's deed, invalidated the foreclosure sale and subjected the property to the effects of the bankruptcy stay. Language was included in S.B. 53 that the issuance and recording of a trustee's deed are purely ministerial acts and that the foreclosure sale of property is final. However, a subsequent, unreported ruling of the bankruptcy court shows that the effort was only partially successful.[4]

Disposition of Excess Sale Proceeds. The provisions of section 57-1-29 were modified to incorporate and expand upon the procedures for handling excess sale proceeds previously found in Rule 4-507 of the Utah Rules of Judicial Administration. The new language clarifies the duties of the trustee and court personnel with respect to excess sale proceeds deposited with the court for disposition. It also sets out the procedure to be used by a person claiming entitlement to the excess proceeds.

Erroneous Release of Deed of Trust. Prior to the enactment of S.B. 53, the trust deed statutes contained no indication of the effect of an erroneous recording of a release or reconveyance of a trust deed. As a result, title insurance underwriters were reluctant to issue policies protecting lenders or third party purchasers of

foreclosed property, if the trust deed had been released by mistake. That often led to litigation in order to resolve title questions. S.B. 53 added subsection (3) to section 57-1-33 to address that problem. The statute now allows the beneficiary of an erroneously released deed of trust to record a corrective affidavit. Such a recording gives the deed of trust its original priority, subject to any lien or interest that was recorded or attached between the time the erroneous reconveyance was recorded and the recording of the corrective affidavit.

H.B. 44 Changes

Trustee Qualification. Apparently responding to the Kleinsmith challenge to the residency requirement, H.B. 44 requires a member of the Bar to either reside in Utah or maintain a 'bona fide'[5] office in the state in order to qualify as a trustee of a deed of trust. In addition, to address the distinction between a local title agent and a title insurance underwriter, section 57-1-21 was modified to allow either to serve as a trustee if holding a certificate of authority or license under the Insurance Code and maintaining a bona fide office in the state.

Trustee's Conduct. Section 57-1-21.5, enacted in 2001 to prohibit trustees from delegating certain core duties, was expanded to prohibit trustees from receiving compensation for referring title, publishing or posting business and from charging more than their actual costs in connection with a loan reinstatement or payoff or a foreclosure sale. Violation of the provision against charging more than actual costs subjects trustees to potential Class B misdemeanor charges and the greater of actual damages or $1,000.00. A provision was included in the expanded section to clarify that the bar on referral compensation does not preclude trustees from receiving non-preferred profits based upon ownership interests or franchise relationships.

Conducting Trustee's Sales. The provision allowing the trustee to conduct the foreclosure sale at the location of the property being foreclosed was removed by H.B. 44.

Requests for Notice. Section 57-1-26 was modified by H.B. 44 to require a trustee responding to a recorded request for notice to provide a 'signed copy'[6] of the notice of default or notice of sale and, also, the following information: (I) the name of the trustee, (ii) the trustee's mailing address, (iii) the address of the trustee's bona fide office in the state (if one is maintained), (iv) the hours during which the trustee can be contacted regarding the notice, and (v) a telephone number that can be used to contact the trustee during business hours.

Delivery of Trustee's Deed. The trustee is now required by section 57-1-28(2) to deliver the trustee's deed to the purchaser within three business days of the day when the trustee receives payment of the bid price. Failure to do so subjects the trustee to liability for any loss suffered by the purchaser as a result of that failure.

Disclosures. Finally, new section 57-1-31.5 imposes disclosure requirements on a trustee providing reinstatement or payoff information to a requesting borrower. The trustee must provide, with the payoff or reinstatement statement, a detailed listing of any of the following items that the borrower is required to pay: attorney's fees, trustee fees, title fees, publication fees and posting fees. In addition, the trustee must disclose any relationship the trustee has with a third party that provides services related to the foreclosure.[7]

Conclusion

Together S.B. 53 and H. B. 44 have substantially modified Utah's Trust Deed foreclosure law. Utah attorneys acting as or advising trustees of Trust Deeds or involved in real property issues should carefully read and consider these changes and how they affect Trust Deeds and their foreclosure.

1 All section references are to the Utah Code Annotated, as amended.

2 The S.B. 53 residency requirement for members of the Bar was successfully challenged in federal court by Phillip Kleinsmith, a member of the Bar residing in Colorado. Pursuant to a summary judgment entered in federal court on August 13, 2001, a permanent injunction was entered barring the enforcement of the phrase 'residing in Utah' in section 57-1-21(1)(a)(I).

3 However, see H.B. 44 changes below where the ability to conduct the sale at the property location was removed.

4 *In re Silcox,* Bkrtcy. No. 01B-29216, December 11, 2001. Judge Judith Boulden ruled that the new language requires that the trustee's deed be executed before the deed is considered effective and relates back to the sale. She went on, though, to state that the effect of the conducted foreclosure sale was to leave the debtor with only bare legal title to the property and no right to cure the default through a chapter 13 plan. So relief from the automatic stay was granted to allow the trustee to execute and record the trustee's deed without further delay.

5 House Bill 44 defines a 'bona fide' office as one that is open to the public, is staffed during regular business hours and at which a trustor may in person request information regarding a trust deed or deliver reinstatement or payoff funds.

6 The language of the bill would appear to require that the trustee sign a copy of the Notice of Default or Notice of Sale that is sent to the requesting party. It is assumed that the actual intent was that a copy of the signed notice be provided.

7 Although the trustee is required to disclose any such relationship, he or she is not required to provide specific detail as to the nature of the interest or the amount of compensation the trustee may receive from that relationship.

In Discharge of a Self-Imposed Sentence

by Judge Gregory K. Orme, Utah Court of Appeals

One advantage of being the Judicial Advisor to the *Bar Journal's* Board of Editors is that I can seize this space any time I want and write whatever's on my mind. Of course, this is mostly a theoretical advantage. For one thing, it's hard to find the time to write something that I don't really have to write. For another, extra writing for an appellate judge is something of a "busman's holiday." So why me; why now? Well, I have a confession to make. For a variety of perfectly valid reasons, I had missed a couple of meetings of the Board of Editors. Maybe three. In a row. Come the August meeting, I had PROMISED I would be there. The meeting fell in one of those occasional summer weeks that are pretty dead – entire days with no meetings, no hearings, no commitments. Just nice blank calendar pages. Perfect for catching up. On one of those days, I left my planner at home. I remembered all those blank pages. I went on with my life and it didn't hit me until just after five: "The *Bar Journal* meeting was at noon today, you idiot!" Because the *Bar Journal* is always looking for material, and I have primary responsibility for "Views from the Bench," there was only one way to conclude my e-mailed apology: "For being such a flake, I will write something for 'Views from the Bench' by the end of the month." That left one problem. And it is the main reason I have difficulty getting judges to write these things: What to write about? Fortunately, the August issue of the *Bar Journal* arrived just as I was about to resort to plagiarism and gave me lots of ideas.

* * *

I sure do wish the on-line "Judges' Benchbook" Frank Carney wrote about would have been around when I first started practicing law in the late 70's. (It's hard to believe, but back then we managed to practice law without an internet. Heck, we didn't even have fax machines or voice mail. File copies of correspondence were made using carbon paper. The wonder of the age was the "mag card" typewriter, which miraculously saved documents on magnetized cards and avoided the need to retype the whole thing every time a change was made. The entire firm shared one such machine and only the most important pleadings merited "the mag card." You knew you were on an important assignment when a senior partner asked you to do something by the end of the week and concluded by saying: "Better get it on the mag card." Anyway, the Benchbook might have kept me from losing my first case.

Now it's not unheard of for a new lawyer to lose his first case. It is rather uncommon, however, when that case is a default divorce. It is really embarrassing to lose a case when you have no opposition. But I managed to.

At the time, Utah did not have "no-fault" divorce. Grounds for divorce were specified by statute, and the only one that worked for your run-of-the mill failed marriage was phrased something like "cruelty, including mental or emotional cruelty." Absent an on-line Benchbook, I just asked around: "So, like, what do I have to get my client to say to demonstrate cruelty. She says her husband isn't cruel – just stupid." The welcome consensus of the attorneys in the office who had done some divorce work was this: "You don't have to do anything. The judge will ask her the questions, and he'll just ask her something like 'Did he say he doesn't love you anymore?' If she says 'yes,' there's your cruelty." Pretty low on the cruelty hierarchy, I thought, but then the word at the time was that Utah had become something of a de facto no-fault state anyway.

My client and I show up at the Metropolitan Hall of Justice and I am directed to Judge Croft's courtroom. Mostly male lawyers and their mostly female clients are assembled in the courtroom. Every five minutes, a new pair is called into the judge's chambers. I am a little disappointed I can't see what's actually happening. I had wanted to see a couple of others before my case was called. Eventually, my unsuspecting client and I are called back. There is Judge Croft, looking rather stern; a court reporter; and a court clerk, barely visible behind a stack of files. We take the two chairs

obviously intended for us and Judge Croft says "Go ahead counsel." I am dumbstruck. What must have seemed like an eternity later, I managed: "Your honor, this is Jane Doe and she would like a divorce." As I settled back into my chair, Judge Croft said, "Then proceed with your evidence on jurisdiction and grounds." Now everyone and everything was spinning around me. To my shock, he wasn't going to ask the questions. I apparently was expected to. I was not prepared for this, but somehow managed to get out the right questions about when the parties were married, how long they'd lived in Salt Lake County, that the complaint had been filed more than 90 days ago. I didn't know when to stop, and so next elicited that she was an adult, that her husband was an adult, that she had paid the filing fee in cash, that she had voted in the last general election, that she was a natural citizen of the United States, that she had a driver's license. Sensing that I might well go on forever, the judge finally said something like "Court is satisfied regarding jurisdiction. Proceed to grounds." I was ready for the big finish: "And has your husband told you he doesn't love you anymore?" With apparent sadness and sincerity, my client softly said "yes." I looked triumphantly at the judge. The judge said "Denied. Next case."

I honestly don't remember what I said to my client on the way back to the office. I remember wondering if you get part of your Bar dues back if you resign voluntarily rather than put them to the effort of disbarring you. I wondered if graduate school would give me credit for any of my law school hours. I left my client in the waiting room and sought out my main source. I explained what had happened. "Ooooohhhhhhhhh," he said. "You must have had Judge Croft." Sure enough, he explained, Judge Croft expects counsel to put on his own case, even in a default divorce, and Judge Croft, alone among the Third District judges, doesn't recognize that saying "I don't love you anymore" is necessarily cruel. After all, it might have been said as a joke. Or it might have been followed with an apology.

After a further tutorial now geared to the peculiarities of Judge Croft's approach, we went back to the scene of what I had thought was to be my professional Waterloo. Back in chambers, I proceeded with my evidence, firing question after question at my well-coached client. "Did he tell you he didn't love you AND did he do so knowing that would hurt and humiliate you and did it in fact hurt and humiliate you?" "Has this caused you sleepless nights and loss of appetite?" "Has he embarrassed you in front of your friends?" "Did he belittle you in front of your family?" Before I could get an answer to "Did there come a time when he threw your beloved cat, Muffy, out the door and into a driving blizzard?," I heard the words by which I knew victory could be snatched from the very jaws of defeat: "Court satisfied as to grounds. Counsel will submit findings of fact, conclusions of law, and order and decree in accordance with prayer. Call the next case."

The point, of course, is that if there had been an internet at the time, and had the Litigation Section placed a Judge's Benchbook on its website, and had Judge Croft shared his preferences and predilections in the Benchbook, this embarrassing blight on my record could have been avoided altogether. Keep up the good work, Litigation Section!

* * *

Annina Mitchell submitted a provocative letter to the editor. In it, she opposed the Bar's intention to come to the defense of judges subjected to public criticism. "It is not the role of the Bar to defend individual judges," she wrote. She was especially critical of Scott Daniels siding with one judge who had been the subject of criticism. She said "[i]t is too easy to invoke the mantra of 'judicial independence' to shield judges from legitimate public questioning of their perceived biases or incompetencies."

In general, I support the Bar's effort. Canon 3B(9) of the Utah Code of Judicial Conduct greatly limits the ability of judges to comment on pending cases. Beyond that, I think it would be unseemly to have a judge rationalize her decisions and explain her actions in the newspaper or on the radio – especially if the judge could be drawn into a protracted, on-going debate that would distract the judge from her duties. Better to have a more disinterested group, like a Bar committee, provide a "defense" for the judge.

In saying that, I don't mean the Bar committee should blindly side with the judge in any and every controversy. The most appropriate contribution will usually be to provide some context and balance. Thus, if a judge were criticized publicly for imposing too light a sentence on a defendant in a sex abuse case, I wouldn't envision that the Bar would defend the judge by asserting this defendant was in fact a good candidate for probation, with therapy, and was not likely to re-offend. Rather, I would hope that the Bar's response would emphasize the inability of the judge to respond publicly because of ethical constraints, while pointing out that sentencing decisions are among the most difficult that trial judges

are called upon to make. The response might note that sentences are not imposed in a vacuum, but within a statutory framework and with guidance from higher courts. The response could point out that the sentencing judge had received a presentence report containing detailed recommendations from knowledgeable experts.

The bottom line would not be that the judge was right and the critics wrong, but rather that the imposition of sentence is a much more intricate matter than members of the public might assume. The response would be pretty much the same whether the Bar committee agreed or disagreed with the judge; whether the judge was criticized for imposing a sentence that was too light or too tough.

* * *

As near as I could tell, it didn't really have much to do with the Judges' Benchbook, but Frank couldn't resist a little dig at The Matheson Bunker, as it is apparently known in some circles. Frank attributed much of the perceived loss of collegiality between the bench and bar in the Third District to the "new fortress-like courthouses with the judges monkishly cloistered away in back when not on the bench." I hear things like this quite often and have mixed feelings on the subject. To be sure, it was nice when I was first practicing to be able to file a complaint and then take a copy of the complaint and the receipt, along with an application for a TRO and supporting affidavits, and roam the halls to see which judges were in but not on the bench. With this reconnaissance completed, you could then go drop in on whichever judge you thought would view your ex parte application most favorably. I'm not sure that was entirely appropriate, but before the Third District assigned cases to individual judges, this was institutionally possible and, well, it's what everybody else did.

Along the way, I had some really nice chats with judges in this casual atmosphere. Had a nice visit with David Dee one time about a destroyer on which he had served; laughed with the late Bryant Croft about how I had lost a default divorce case once in his courtroom – "well you weren't the first and you weren't the last," he assured me; and talked a little baseball with the then-newly appointed Dennis Frederick. At the same time, my unscheduled visits interrupted any number of judges deep in thought, finalizing a ruling they were about to announce. Once I intruded on a judge just as he hung up the phone, and I guessed that the tears he hurriedly wiped away resulted from sad family news he had just learned rather than from seeing me yet again. And I noted, even in those comparatively peaceful times, how easy it would be for a deranged and disgruntled litigant to walk right in to the judge's office and shoot or stab the judge. The lax security and open atmosphere seemed perfectly normal at the time, but that kind of easy access to judges was ethically problematic, intrusive, and downright unsafe.

Perhaps, as happens with so many things, we have swung too far the other way. But lawyers wouldn't drop in unannounced on the their dentist, or even each other. Why should judges not benefit from the same level of professional courtesy? A building plan that facilitates easy ex parte contacts isn't probably the best for a courthouse. The recent record speaks for itself in terms of the need for tight security at most public buildings, and definitely at courthouses. So, with an occasional yearning for those halcyon days of yore, on balance I support the floor plan, security, and limited access that typifies the Matheson Courthouse. It would have been out of place in the 60's and 70's, but it's about right for the 00's. (Is that what we call this decade? Not very catchy, is it?)

That having been said, loss of collegiality should not be a byproduct of a safe and efficient courthouse. Lawyers who cannot drop in on judges need to be able to schedule appointments by telephone. If they end up leaving a voicemail message rather than talking to a human, they are entitled to a reply later that same day – and the sooner the better. Judges should occasionally leave their chambers and stroll the halls, just so they can say hello to friends and acquaintances in the Bar. Getting judges to serve on Bar committees and CLE programs has always been a good way to promote collegiality. Those receptions at the Alta Club for new judges or Bar admittees have been nice affairs, and law school programs and the activities of local Bar associations often bring judges and lawyers together as well. I think more of this kind of interaction could fill the void in collegiality many feel, whether or not it is attributable to limited courthouse accessability of judges.

* * *

I recently came across this pearl of wisdom. I wish I could say these words were spoken by Gandhi or Shakespeare or Lou Gehrig, but it was actually Art Linkletter (or, I should say, it was attributed to him by whoever sent me the email a while back that included a number of such gems). Still, it's a good one and, for no particular reason, I'll close this essay with it: "Things turn out best for the people who make the best out of the way things turn out." Or as Sheryl Crowe sings, "It's not having what you want; it's wanting what you've got."

Commission Highlights

During its regularly scheduled meeting of August 2, 2002, which was held in Salt Lake City, Utah the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board approved the minutes of the June 26, 2002 Commission meeting via the consent agenda.
2. John Adams presented Denise Dragoo with a plaque in recognition of appreciation of her many years of service on the Commission. Scott Daniels also presented her with an "Oath of Attorney" plaque.
3. John Adams updated the Commission on the Dialogue on Freedom project. Charles Stewart, the Bar's Pro Bono Coordinator is currently assisting full time (along with Summer Shumway) and also spoke.
4. John Adams reported that John Rees has been appointed as an Annual Convention co-chair but to date the other co-chair position has not yet been filled.
5. John Adams requested that the Bar Commissioners contact the chairs of each section and committee of which they are the liaisons, and discuss what level of involvement would be appropriate.
6. The Annual Bar Leadership meeting will be held at the University of Utah Alumni House on October 2 and begin with lunch.
7. The Commission reviewed the possibility of "outside" support for the Lawyers Helping Lawyers Program and the future ABA audit.
8. The Commission discussed the Bar's survey on the Annual Convention, noting that we can make a location change if we have a year's notice.
9. Debra Moore reported on the Commission Task Force on Delivery of Legal Services. A facilitator has been hired to conduct statewide focus group sessions in order to gather consumer input. The focus group will be designed, in part, to ascertain if those individuals have access to the internet, if they have had previous experience with lawyers, what their legal needs consist of and how they would go about finding a lawyer. A lengthy discussion followed related to further development of various related aspects.

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.

Dialogue on Freedom Update

The Dialogue on Freedom program has achieved amazing success! The program is still going strong, but already the numbers are impressive. As of September 13, 2002, Utah attorneys have conducted 1,292 dialogues in over 100 schools to 35,505 Utah students. This means that, on average, Utah attorneys and members of government have given over 250 presentations per day. Schools are still submitting requests for presentations and the Bar continues to schedule additional presenters, so there will be a complete report on the Dialogue on Freedom in next month's *Bar Journal.*

Utah State Bar
DIALOGUE ON FREEDOM

Eligibility Requirements for Court Appointment as a Private Attorney Guardian Ad Litem

Utah Code Anno. Section 78-7-45

The Utah Office of Guardian ad Litem offers training for attorneys who desire to be eligible for Court appointment as Private Attorney Guardians ad Litem in child custody and visitation cases, and in cases when the Office of Guardian ad Litem is in need ot conflict counsel. The following is a list of requirements to be met in order to act as a Private Attorney Guardian ad Litem:

1. Be a member in good standing with the Utah State Bar.
2. Apply, initially by letter, to the Utah Office of Guardian ad Litem (c/o Lori Brown, Administrative Assistant, 450 South State Street, P.O. Box 140241, Salt Lake City, Utah 84114-0241; (801) 578-3829, fax (801) 578-3843) expressing interest in being eligible for Court appointment as a private guardian ad litem. Other application materials must also be completed in conjunction with the initial training course.
3. Complete the initial training course (approximately 15 hours) established and facilitated by the Utah Office of Guardian ad Litem (and usually earn CLE credit in the process); ***and*** 5 hours of in-service training within each year thereafter. Although there is no cost for the training classes, there are some minor out-of-pocket costs involved (e.g., BCI criminal background check: $15.00; video tapes of some course sessions; optional reference books and materials; etc).
4. Pass an FBI, BCI, DCFS Child Abuse Data Base, and any other like data base screening by the Utah Office of Guardian ad Litem in any state in which the applicant has resided.
5. Sign an agreement in a form approved by the Utah Office of Guardian ad Litem to be removed from the appointment eligiblity list in the event of failure to perform in a competent manner as determined by the Office, or the failure to meet minimum qualifications.
6. File monthly reports with the Utah Office of Guardian ad Litem on assigned cases in the format approved by said Office.
7. Be evaluated at the discretion of the Utah Office of Guardian ad Litem for competent performance and minimum qualifications.

If you have questions regarding the program you may contact:

Craig M. Bunnell, Esquire
Training Coordinator
Office of Guardian ad Litem
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Phone: (801) 238-7861

2002-2003 Training Schedule
(specific dates will be assigned when training nears)

August – September 2002
7th District (Price and 8th District (Vernal)

October – November 2002
2nd District (Layton)

January – February 2003
3rd District (Salt Lake) and 4th District (Provo)

February – March 2003
5th District (St. George) and 6th District (Richfield)

April – May 2003
1st District (Logan)

Discipline Corner

SUSPENSION

On July 15, 2002, the Honorable Anthony B. Quinn, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Suspension suspending Kent L. Christiansen from the practice of law for three months for violation of Rules 1.7 (Conflict of Interest: General Rule), 1.8 (Conflict of Interest: Prohibited Transactions), 1.16(a) (Declining or Terminating Representation), 4.1(a) (Truthfulness in Statements to Others), and 8.4(a) and (c) (Misconduct), Rules of Professional Conduct. The Order of Suspension's effective date is August 15, 2002.

In summary:
Mr. Christiansen represented a client in a divorce case. The client was also his secretary with whom he was romantically involved. Mr. Christiansen was willing to represent her and told her there would be no charge. Mr. Christiansen failed to discuss the possible risks and disadvantages of representing his client during their romantic relationship. Mr. Christiansen's interests may have been limited because he could not give his client impartial advice on the possibility of reconciliation and legal issues presented by cohabitation. Mr. Christiansen presented a promissory note and trust deed to his client to evidence a loan from him to the client, which the client signed because of her faith and trust in Mr. Christiansen due to their romantic relationship. Mr. Christiansen did not handle the promissory note and trust deed transaction in a manner to ensure that the client understood the transaction and had a reasonable opportunity to seek independent counsel. Mr. Christiansen also denied to opposing counsel in the divorce matter that he was romantically involved with his client.

Mitigating factors include: absence of prior record of discipline; good character and reputation (outside of the events that came forward in this case); and substantial experience in the practice of law.

Aggravating factors include: multiple offenses; vulnerability of victim (vulnerability is created as a result of the relationship between the lawyer and the client).

REPRIMAND

On July 10, 2002, the Honorable Tyrone Medley, Third Judicial District Court, entered an Order of Discipline: Reprimand reprimanding David R. King for violation of Rules 1.2(a) (Scope of Representation), 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. King was retained to represent a client in connection with an interpleader filed in the District Court. Mr. King obtained a Certificate of Default on his client's behalf, but did not resist having it set aside, although it was his client's desire to do so. Mr. King failed to keep his client reasonably informed about the status of his case and to promptly comply with his requests for information. Mr. King failed to explain his client's matter to the extent reasonably necessary to enable his client to make informed decisions regarding the representation.

Mitigating factors include: no record of prior discipline; did not have a dishonest or selfish motive; cooperative attitude toward the disciplinary proceedings.

Aggravating factors include: substantial experience in the practice of law.

ADMONITION

On July 11, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.7(b) (Conflict of Interest: General Rule) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client against criminal charges. The attorney simultaneously represented a client's sibling in an unrelated criminal matter. The attorney continued to simultaneously represent the client and the client's sibling after the client's sibling had been called to testify against the client.

Mitigating factors include: cooperative attitude toward the disciplinary proceedings.

ADMONITION

On July 18, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 5.5(b) (Unauthorized Practice of Law) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client against criminal charges. The initial interview was conducted by the attorney's office manager, outside of the attorney's presence. All contact with the client thereafter was with the office manager and not with the attorney.

ADMONITION

On July 18, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.8(h) (Conflict of Interest: Prohibited Transactions), 5.5(b) (Unauthorized Practice of Law), and 8.4(a) (Misconduct).

In summary:
The attorney was retained to represent a client in a DUI matter. The client signed a retainer agreement which stated that the client could not bring any type of formal or informal complaint against the attorney for anything the client found unsatisfactory. The retainer agreement was drafted by the attorney's office manager and was not reviewed or signed by the attorney. The initial interview was conducted by the attorney's office manager, outside of the attorney's presence. The attorney's office manager wrote and signed a letter on the attorney's letterhead, requesting a hearing on behalf of the client.

ADMONITION

On July 18, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.8(h) (Conflict of Interest: Prohibited Transactions), 5.5(b) (Unauthorized Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client against criminal charges. The client signed a retainer agreement which stated that the client could not bring any type of formal or informal complaint against the attorney for anything the client found unsatisfactory. The retainer agreement was drafted by the attorney's office manager and was not reviewed or signed by the attorney. The initial interview was conducted by the attorney's office manager, outside of the attorney's presence.

ADMONITION

On July 19, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.16 (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a child custody matter. The attorney failed to attend scheduled court hearings on behalf of the client. The attorney failed to provide sufficient information to the client about the attorney's proposed stipulation

and left the client to make the decision. The attorney failed to properly terminate representation of the client, forcing the court to order the attorney's appearance or submission of a withdrawal of counsel.

ADMONITION

On July 22, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a divorce matter. The client attempted to contact the attorney, but the attorney did not return the client's telephone calls. The client requested his file from the attorney. The attorney was unable to locate the file. The attorney referred the client to the court to obtain a copy of the file.

ADMONITION

On July 22, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4 (Communication), 1.16 (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a personal injury matter and subsequent to that, a collection action brought against the client by one of the medical providers that had not been paid. The case settled. The client received a portion of the settlement and a portion was to be paid to the medical bills. The attorney did not complete the collection case. The attorney told the client the attorney was giving up the practice of law and would send the client's records to the client. The client did not receive any records, including evidence that the medical bills had been paid.

ADMONITION

On July 30, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication), 1.15(b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a discrimination action. The client received some of the settlement money but believed that the amount was less than what should have been received. The client requested that the attorney send the balance of what was owed, but the attorney failed to do so. The attorney failed to respond to the client's requests for information. The attorney failed to cooperate with the Office of Professional Conduct's investigation of the matter.

ADMONITION

On July 30, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The Office of Professional Conduct ("OPC") received a complaint from a client of an attorney. The OPC forwarded the complaint to the attorney requesting a written response. The attorney's relative sent a letter to the OPC stating that the attorney was unable to respond because of physical incapacity. The letter did not address the complaint against the attorney. The OPC sent a letter to the relative requesting a response to the complaint. The attorney sent a letter to the OPC that did not address the client's complaint. The OPC sent two other reminders to the attorney and a Notice of Informal Complaint, but did not receive a written response to the complaint.

ADMONITION

On August 16, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 1.9(a) (Conflict of Interest: Former Client) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client relative to an investigation of allegations of misrepresentations in the client's transfer of stock. The client informed the attorney that stock was transferred to an individual. The client later sued that individual to recover the same stock. The attorney began representing that individual against his former client, without obtaining a waiver of conflict of interest. The attorney thus represented a client against a former client in a matter that was substantially factually related to the matter in which the attorney represented the former client and the former client did not consent to waive the conflict of interest.

Strangers in the House: Coming of Age in Occupied Palestine

by Raja Shehadeh

Revenge: A Story of Hope

by Laura Blumenfeld

Reviewed by Betsy Ross

World developments of the past year demand an attempt to understand the complex psychologies contributing to current events. These two books, representative of the "natural enemies" of the Middle East situation – one written by an American Jew with strong ties to Israel, the other by a Palestinian living in the West Bank – provide some perspective to understanding the hatred fueling the conflict, and offer some hope, where many see none, for an end to hostilities.

Murder and attempted murder tie these books together. In Shehadeh's book it is the murder of his father. Though an unsolved crime, the suspicion is that Aziz Shehadeh was murdered by Palestinians who opposed his advocacy of a peaceful, two-state solution for the Israeli-Palestinian conflict. In Blumenfeld's book, her father is grazed by a bullet from the gun of a member of a rebel faction of the PLO responsible for attacks on several tourists in Jerusalem. Both authors explore these and other very personal events in a way that sheds light on the collective pain, disenfranchisement, and discord.

Shehadeh is a lawyer, as was his father, and a founder of the nonpartisan human rights organization Al-Haq. History being an integral part of the Middle East, Shehadeh's own history is important to relate. (There is, by the way, an enlightening historical chronology provided beginning with the first wave of Jewish settlers to Palestine in 1878-1904 through the 1948 establishment of Israel as a state, the 1964 establishment of the PLO in Jerusalem, and ending with the February 2001 entry: "The number of Jewish settlements in the West Bank and Gaza reaches 205,000 and in East Jerusalem, 180,000 living in two hundred settlements.") Shehadeh's family were residents of the rich coastal town of Jaffa. They left their home temporarily in April 1948 to wait out the fighting that preceded the establishment of the Israeli state, and traveled to the West Bank city of Ramallah where there was another family home. On May 14, 1948, Jaffa was included in the land declared to be part of the Israeli state. The Shehadehs never returned. Their property, along with all property owned by Palestinians, was confiscated by the Israelis. Perhaps shielding himself a bit from this history, Shehadeh intellectually refers to these events as "that cataclysmic fall from grace."

Part of the Palestinian intellectual elite, Shehadeh offers a critique of the everyday Palestinian mindset, which was preoccupied with demonizing the Israelis and playing the martyr, or as he writes:

> The people around me had a simple solution to all my dilemmas; they hated the Israelis, all of them, without exception. They spit after they saw an Israeli bus pass by. But this was not something I could emulate. It was just such simplistic, anti-Israel attitudes that Father said had brought us to the state of defeat we were now in.

The many dimensions of the situation are undermined by such simplicity and offer political sound-bites, but do not capture reality. It is particularly in the West that political sound-bites are readily adopted. So Shehadeh relates a meeting in the United States with a Palestinian writer living in the States for many years:

> We went down a long staircase underground to the restaurant and my host impatiently asked me a few perfunctory questions and them immediately began to preach to me: "You should resist the occupation. You should not let them get away with it. You should not accept anything that they have as good. This is an important temptation to resist, otherwise you sill find yourself dragged into their way of thinking. It is all propaganda. They are very clever at propaganda. We know this. You should know this too.

You should never forget this."

. . . .

I sat opposite him at the thick wooden table in the dim yellow light looking straight into his darting eyes, nodding and saying nothing. I wondered if he had ever considered that he did not know what he was talking about. . . . He presumed to know everything about Israel and about us, the Palestinians living under its military rule. He did not have to worry about being stopped and harassed. He did not have to be concerned after going home that soldiers could enter and do what they wished under the authority of the military law. He did not live with the constant news of bombs exploding here and there and injuries and deaths and bloodshed and collective punishments and hatred and fear and no certainty from day to day whether you can go on with the education of your children or with your business or profession.

Shehadeh strongly suggests that creating a one-dimensional enemy, though good for political expediencies, turns its back on the human reality. He sees for himself, even after all the injustices he has suffered, the role of fighting for human rights – and not just for Palestinians, as "human" rights is not exclusive. As he notes, his goal is "[t]o fight to reveal the pain and dehumanization that the occupation was inflicting on the oppressor no less than on the oppressed."

His father was murdered, conjecturally, for advocating compromise; for eschewing political simplicities and extremity. Shehadeh is his father's son.

Blumenfeld's father was shot not for his political views, but because he was a tourist in Jerusalem. Blumenfeld's account is a direct result of that shooting, as she writes: My father was shot by a terrorist. A decade later, I went looking for him . . . ." seeking, as her title suggests, revenge.

Blumenfeld is by profession a journalist (a writer for the Washington Post). She travels to Israel ten years after her father's shooting to interview the family of the shooter, who is in prison, without revealing that she is the daughter of his victim. Her goal is very generally revenge, though what form it should take is unclear to her.

In interviewing the family, Blumenfeld initially comes upon the attitudes of Palestinian victimization and Israeli demonizing Shehadeh wrote about. As she asks about the reason for the shooting, the family responds:

"He did his duty. Every Palestinian must do it," the father said. "Then there will be justice."

"Was it for your honor?" I said.

"Not for my honor, for the honor of our people," he said.

"We were all with him politically," said Saed, the shooter's oldest brother. "We all think it was worth it-his duty to get back all the cities taken by the Jews."

. . . .

"And what about the man he tried to kill?"

"It wasn't a personal vendetta. . .He didn't know the man. He did it so people would look at us."

. . . .

"I am a victim," he said.

Blumenfeld also echoes Shehadeh's concern with the effects of current events on both sides. She begins to understand that the oppressor and the oppressed are often the same, as she notes the dangers of revenge: "A symmetry develops between two people engaged in revenge, as they match blow for blow. The parties mimic each other's tactics – whether it is price-fixing in business or cheating in a marriage – which they might otherwise condemn." Revenge is not dangerous "because of what it does to your enemy, but because of what it does to you."

As the family takes her in collective simplicities flounder. Both sides, when faced with the individual, real human element, must rethink perceptions and actions. Though it may seem trite, in this real-life story, Blumenfeld ultimately testifies at the shooter's "parole" hearing, requesting clemency.

Blumenfeld's is a very emotional memoir, whereas Shehadeh's is intellectual. In both, though, the power is in the form – the memoir – the individual story of individual lives. In Blumenfeld 's book, she reflects briefly on the events of September 11, and the role played by collective anonymity:

"Following the attack, our president spoke of 'revenge' until an aide urged him to call it 'justice.' New channels adopted the slogan 'America Strikes Back.' American bombs dropped on Afghanistan were scrawled with payback messages: 'Pentagon' and 'WTC.'

. . . .

Like so many Americans, I was groping for a response. And like many, I wavered between hope and despair. Is evil unalterable? If the terrorists had known their victims-sat down with their children, drank tea with their wives – could they have done this?"

For both writers, hope is in the movement from collective generalization to individual acknowledgment; from a feeling of powerlessness in the face of unthinkable current events to a feeling of power in moving into the future.

The Legal Assistant Division: A Work in Progress

Marilu Peterson, CLA-S – Chair

And the work is progressing very nicely, too.

Practice Section CLE. Over the last several months, Shari Faulkner, CLA, our Bar Sections Liaison has been in working with some of the sections on issues involving CLE and possible non-voting membership. Thanks to Shari's efforts and with the support of these sections, Legal Assistant Division members will now be included in CLE mailings for the Litigation Section, the Family Law Section, and the Business Law Section. In addition, our members are eligible for non-voting membership in the ADR and Collections Sections, and in the Franchise Law Section subject to the approval of its chair. As most of us are aware, the CLE offered in the sections is practice-specific and often the source of very current and helpful practice aids and support. In the meantime, Shari will continue working with the other sections and the Young Lawyers' Division on similar arrangements.

On other matters, the Board met three times in the summer and has considered the following:

June

- Approved the following standing committees: Bylaws / Standing Rules (Deb Calegory, Chair); Brown Bag CLE (Ann Bubert, Chair); Ethics (Suzanne Potts, Chair); Long-range Planning (Tally Burke, Chair); Professional Standards/CLE (Sanda Kirkham, CLA); Utilization (Robyn Dotterer, CLA); Membership (Shawnah Dennett, Suzanne Potts, Deb Calegory, Denise Adkins).
- Renewed the appointment of Shari Faulkner, CLA, as Bar Sections Liaison.
- Approved the following as members of the Executive Committee: Bonnie Hamp, CLA (Secretary); Ann Bubert (Finance Officer); Deb Calegory (Parliamentarian); Shari Faulkner, CLA (Bar Sections Liaison).
- Approved the appointment of Bonnie Hamp, CLA, to the software research committee to be chaired by John Adams, Bar President.

July

- Renewed the appointment of Danielle Davis as Liaison to the *Bar Journal* Committee.
- Reviewed the status of membership renewals.

HELP! I NEED A LAWYER, BUT . . .
sponsored by the Legal Assistant Division

We hear that all the time: a sister, a son, a neighbor, someone needs help but has too much income to qualify for no-cost legal services and not enough money to hire a lawyer.

What is out there for someone in the middle? Who has some answers? Who has some suggestions? What are future plans to meet this need?

LEGAL SERVICES FOR MIDDLE INCOME PEOPLE

Friday, November 22 – 8:00 am to noon
Law & Justice Center
3.5 hours CLE (including ethics)
CLA-E pending

$45.00 LAD members $55.00 non-members

- Received report from Denise Adkins regarding CLE and membership development in Region I.
- Agreed to continue coordinating and cross-mailing notices of CLE events with LAAU.
- Received report from Ann Bubert that the first Brown Bag CLE in Salt Lake will be August 21, 2002, on employment law issues.
- Received a summary of the bylaws from Deb Calegory, the Parliamentarian.
- Received report of the Chair, Marilu Peterson, CLA-S, on the Bar Commission meeting in Sun Valley, Idaho.
- Considered possible candidates for the position of Bar Commission Liaison.
- Approved the formation of a new committee chaired by Thora Searle to review the way the Division handles enrollment, CLE reporting, file retention and storage, and related matters, and to make recommendations to the Board for possible changes in the overall management of the Division.

August

- Approved the appointment of Joyce A. Nunn as Bar Commission Liaison.
- Discussed the Division's financial status and future needs.
- Received the report from the Bar Commission Liaison and discussed the "Dialogue on Freedom" project sponsored by the leadership of the Bar.
- Received report from Shari Faulkner, CLA, on the status of possible non-voting membership and CLE opportunities for Division members in the various practice area sections.
- Received report from Denise Adkins that Region I will hold a CLE tour of the Weber County Recorder's Office on Wednesday, October 2, in Ogden, and discussed the possibility of a Legal Assistants' Day luncheon in Ogden in May of 2003.
- Received report from Marilu Peterson, CLA-S, regarding the appointment of the CLE Committee. Yvette Gillespie will chair the fall CLE event on November 22, and Jody Jensen, CLA, will chair the annual meeting on June 20, 2003.
- Received report from Bonnie Hamp, CLA, regarding the NALA Meeting in July. LAAU's delegate will be invited to the September Board meeting.
- Received report from Suzanne Potts regarding Brown Bag CLE in Region IV in October and plans for a membership drive in the Southern Utah area.

And so the work continues. The Division is its members. Positive input and new ideas are always welcome!

The Young Lawyers' Division Prepares for 2002-2003

by Victoria C. Fitlow, Young Lawyers' Division President

The Young Lawyers Division (YLD) of the Utah State Bar is gearing up for another year of service to its members and service to the public.

Executive Committee. The executive committee of the YLD has worked hard over the summer, making appointments to chair and co-chair the YLD's various committees, and preparing the handbooks, budgets, directories, and other materials necessary to make the YLD run smoothly. Your officers for 2002-2003 are: Vicky Fitlow, President; Debra Griffiths, Treasurer; Amy Dolce, Secretary; Christian Clinger, President-Elect; Nathan Alder, Past President.

And Justice for All. The YLD has been involved with helping the And Justice for All campaign since its very first year. This year, the YLD has created its own committee to support And Justice for All. Over the summer, Candice Vogel and Wade Budge have worked with And Justice for All and The Dead Goat Saloon to organize a fundraiser pool tournament. Sixteen teams of two will compete in the first annual "Bar Sharks for Justice" in October, with the overall winners receiving a traveling trophy. Many local organizations have donated prizes, which will be given away to the teams competing. All proceeds will go to And Justice for All. If you are interested in competing, please contact Candice or Wade.

Annual/Mid-Year Meeting. Once again the YLD will sponsor the young lawyer track of CLE courses at the annual and mid-year meetings, as well as organizing and staffing the kiddie carnival at the annual meeting. George Burbidge and Martha Knudson are already underway with plans to make this year's meetings better than ever.

Bar Journal. Bruce Burt and Dave Mortenson are busy soliciting articles for the *Bar Journal.* Many young lawyers have contributed articles in the past. If you have an article you would like to have published in the *Bar Journal,* please contact Bruce or Dave.

CLE. Loyal Hulme and Joseph Covey and their dedicated committee have already set an impressive schedule of CLE topics geared toward young lawyers. The schedule is not yet full, however, so if there is a topic you would particularly like to see covered, please let us know.

Community Service. The Community Service committee of the YLD will be very active this year. Jason Hardin and Cheryl Mori-Atkinson are planning 3-4 events that will give young lawyers a chance to make a real difference in the community. Look for e-mails from Jason and Cheryl and be sure to save the dates and participate in these fabulous projects.

Law Day. Mickell Jimenez and Kelly Williams are hard at work planning next May's Law Day celebration. The search for a speaker is well underway, and the venue will be selected shortly. Keep a look out for candidates you would like to nominate for Young Lawyer of the Year and the Liberty Bell award.

Needs of Children. The Needs of Children committee is another new committee for the YLD this year. Amy Hayes and Patrick Tan will be working with Prevent Child Abuse Utah to update a pamphlet on recognizing signs of child abuse that is given out to those working with children. Once these pamphlets are published in December, the committee will coordinate with the Utah State Bar's Needs of Children committee to identify appropriate projects.

Membership. Kimberly Havlik and Jamie Zenger are determined to reach you! The Membership Committee is charged with reaching out to all members of the YLD and determining how best to serve their needs. Keep an eye out for a survey from the Membership Committee this year that will give you a chance to tell us how we can be of service to you. Also, if you want to get involved with YLD but are not sure just what your interests are, contact Kim or Jamie and they will help you figure out where you can best be of service.

Professionalism. Jeff Vincent and David Bernstein will sit on the Utah Supreme Court's committee on Professionalism. This committee is charged with enhancing the collegiality and integrity of all members of the Utah State Bar. Young lawyers have an

important role to play in this endeavor. Look for a report from the Professionalism committee sometime this year.

Public Education. Public Education will once again be intimately involved with the Mock Trial project, in which junior high and high school students all across Utah compete in a fantasy trial. Stacey Snyder and Sonia Sweeney will also be working to implement the American Bar Association/Young Lawyers' Division project entitled Tolerance Through Education. This nationwide program aims to reach third-grade students and teach them about the values of tolerance.

Tuesday Night Bar. Last, but certainly not least. This flagship program of the Young Lawyers Division provides free legal services to some 2000 members of the public annually. Every Tuesday evening, volunteer lawyers organized by Jason Perry and Jami Momberger give free, 1/2 hour legal consultations on almost every legal topic imaginable. Tuesday Night Bar is your best opportunity to get involved with the YLD, because it involves over 75 young lawyers every year. Please contact Jason or Jami if you are interested in Tuesday Night Bar.

Regional Representatives. The YLD is committed to young lawyers across the state of Utah. As part of that effort, the YLD is in the process of recruiting representatives from each of the regional bar associations. If you are a young lawyer and member of a regional bar association, please contact Vicky Fitlow about becoming involved in YLD.

There is always room for young lawyers at the YLD. If you are under 36 years old, or if you were admitted to the Utah State Bar in 1998 or later, you already are a member! There are no dues to pay. All you have to do is get in contact with someone who is already involved in YLD and let them know your interests. You can always call me, Vicky Fitlow, at (435) 649-2525, or e-mail me at fitlow@wfke.com.

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
10/17/02	**NLCLE: Real Property.** 5:30 pm – 8:30 pm. $45 YLD, $60 others. Purchase and Sale Agreements, Easements and Restrictive Covenants, and Mortgage Loan Documents.	3 CLE/NLCLE
10/17/02	**Fall Corporate Counsel Seminar.** 9:00 am – 1:30 pm. $40 section, $80 non-section. Environment Liability Issues for corporations, Franchising, Employment Law, Federal "Corporate Responsibility" Legislation.	4 incl. 1 hr ethics
11/1/02	**New Lawyer Mandatory.** 8:30 am – noon. $45 per person, pre-registration recommended.	Satisfies New Lawyer Requirement
11/8/02	**CLE'n Golf.** St George, Utah – Sunbrook Golf Course. Litigation related issues from the Enron / WorldCom fallout. Document perservation, document retention policy issues, financial statement fraud and officer and director malfeasance. $35 for seminar and 18 holes of golf	3
11/13/02	**Law & Technology – Building a Mote Around Your Castle.** 9:00 am – 3:00 pm. Keeping your client data, documents and entire office secure from disaster.	5
11/13/02	**ADR Academy: Strategy in Mediation.** 5:30 – 6:45 pm. Series $150 YLD, $200 ADR Section, $250 others. Individual pricing $40/$50/$60.	1.5 CLE/NLCLE
11/15/02	**Where Medicine and Law Intersect in Aging and End-of-Life Care.** 9:00 am – 3:00 pm. $100 before November 8th, $120 after. Medical and legal experts discuss current thoughts and trends in informed consent and decision making issues and current issues in pain management, abuse, and end of life.	6
11/21/02	**NLCLE: Practicing in the Juvenile Courts.** 5:30–8:30 pm, $45 YLD, $60 others. Major differences between adult and juvenile justice systems. Research of actual practice and policy of juvenile legal representation in Utah. Panel Discussion: The role of the prosecutor and the public defender, working together for fair juvenile representation.	3 CLE/NLCLE
11/22/02	**How to Start and Build a Successful Law Practice.** Broadcast International Studios, Midvale, UT. Business plans and structure, client acquisition and development, building a relationship with the bank, technology streamlining for your office, office security.	8
12/10/02	**Best of Series: TBA.** $30 per session.	6 (1 hr ethics)
12/11/02	**ADR Academy: Ethics in Mediation.** 5:30 – 6:45 pm. Series $150 YLD, $200 ADR Section, $250 others. Individual pricing $40/$50/$60.	1.5 CLE/NLCLE
12/12/02	**Powerful Communication Skill: Winning Strategies for Lawyers (NPI)** How to establish immediate credibility, how to communicate with difficult people, how to say "no" and gain respect, how to become an effective presenter, how to evaluate and improve verbal and non-verbal communication so you can convey your message.	7
12/13/02	**Ethics: Lawyers Helping Lawyers**	3
12/18/02	**Last Chance CLE:** Topic TBA.	3
12/19/02	**Effective Appellate Advocacy.** Litigating Beyond the Trial Court. CLE designed to help litigators with any level of experience become more effective appellate advocates. Understand key rules in the federal and state appellate courts, learn how to better identify key appellate issues, and discover what judges from the Tenth Circuit and the Utah Court of Appeals and the Utah Supreme Court find effective in briefing and oral argument. 9:00 am – noon. $25 YLD, $40 section, $60 others.	3 CLE/NLCLE

Classified Ads

RATES & DEADLINES

Bar Member Rates: 1-50 words – $35.00 / 51-100 words – $45.00. Confidential box is $10.00 extra. Cancellations must be in writing. For information regarding classified advertising, call (801)297-7022.

Classified Advertising Policy: It shall be the policy of the Utah State Bar that no advertisement should indicate any preference, limitation, specification, or discrimination based on color, handicap, religion, sex, national origin, or age. The publisher may, at its discretion, reject ads deemed inappropriate for publication, and reserves the right to request an ad be revised prior to publication. For display advertising rates and information, please call (801)538-0526.

Utah Bar Journal and the Utah State Bar do not assume any responsibility for an ad, including errors or omissions, beyond the cost of the ad itself. Claims for error adjustment must be made within a reasonable time after the ad is published.

CAVEAT – The deadline for classified advertisements is the first day of each month prior to the month of publication. (Example: May 1 deadline for June publication). If advertisements are received later than the first, they will be published in the next available issue. In addition, payment must be received with the advertisement.

POSITIONS AVAILABLE

Law Clerk – First District Court. First District Court has an opening for a Law Clerk to perform research and analysis on complex legal issues for district court judges assigned to criminal cases in Logan and Brigham City. Qualifications: Graduation from ABA accredited law school with Juris doctorate. Bar membership preferred; if not admitted to Bar, must successfully complete Bar requirements at next opportunity. Should possess working knowledge of state court system, Utah Law and legal terminology, skill in legal research, legal writing format and citation techniques. LEXIS proficiency, excellent oral and written communication skills and ability to maintain confidentiality also required. Salary: $18.09 – $20.17/hour DOE plus benefits. Closing date: October 15, 2002, at 5:00 p.m. Applications may be obtained from Dept. of Workforce Services, the Administrative Office of the Courts, 450 South State, SLC, or from the Internet at http://courtlink.utcourts.gov/jobs. Phone: (801) 578-3804/3890. Return applications to Sharon Hancey - Court Executive, 1st District Court, 43 North Main; PO Box 873, Brigham City, Utah 84302-0873, (435) 734-4600. Equal Opportunity Employer.

St. George Law Firm looking for Associate Attorney 3-5 yrs experience primarily in real estate and transactional work, some litigation experience preferred. Salary and benefits negotiable. Call Curtis: 435/628-3688 or send resume to Snow Jensen & Reece, 134 North 200 East, Suite 302, St. George, UT 84770.

ASSOCIATE ATTORNEY: Growing litigation firm has immediate need for associate with 2-4 years PI experience. Medical background a plus. Firm handles larger, more complex cases. Medical malpractice and products liability emphasis. Very competitive salary. Send resume to attorney@networld.com

The Salt Lake Legal Defender Association is currently accepting applications for several trial and appellate conflict of interest contracts to be awarded for the fiscal year of 2003. To qualify, each application must consist of two or more individuals. Should you or your associate have extensive experience in criminal law and wish to submit an application, please contact F. John Hill, Director of Salt Lake Legal Defender Association, 532-5444.

POSITIONS WANTED

Attorney-CPA licensed in Utah and California seeks association with retirement minded practitioner or small firm with near term partnership potential. Substantial experience in bankruptcy, estate, probate, tax and general litigation matters. Superior client skills and credentials. PO Box 1625, La Quinta, CA 92253-1625 or by email to jhglaw@ix.netcom.com

OFFICE SPACE/SHARING

Holladay Office in building with several lawyers and accountants, includes use of conference room, break room, receptionist, voice mail. Furnished $650/month; unfurnished $600/month. Contact Deirdre @ (801) 272-8261.

Small Bountiful law firm has office space to sublease. Includes furniture, receptionist, all office equipment (including a computer, fax, etc) and a conference room. Rate negotiable. Call (801) 298-4800.

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

UPSCALE OFFICE SPACE near Courthouse, upgraded finish, newly remodled, 200 to 1500 sq. feet. 66 Exchange place, must see. 558-8900 Jay Mirafie, Stonebrook R.E.

Office Sharing with established attorney in South Jordan, minutes from Sandy District Court. All services available including exp. legal sec, fax, phone, copier, ample parking, restaurants. 254-9209 or 979-4242.

SERVICES

SEX CRIMES/CHILD ABUSE Defense Consultant – Prepare defense for hearsay admission. Determine forensic statement reliability/validity. Assess for Daubert/Rimmasch standards. Detect unsupported allegations, investigative bias, error and contamination. Bruce Giffen, D. Psych. Evidence Specialist. (801) 485-4011.

QUALIFIED DOCUMENT EXAMINER, Linda L. Cropp. Board Certified, American College of Forensic Examiners, Fellow; National Association Document Examiners, International Graphonomics Society, Certified Fraud Examiners, International Association of Financial Crimes Investigators. Court Qualified, Forgery Detection, Jury Screening, Behavioral Profiles, Witness Consulting, Testimony. ALL HANDWRITING SERVICES, Phone/Fax: (801) 572-1149. e-mail: allhandwriting@att.net

Estate Planning: Online estate planning and business planning information is now available at www.utahestateplanners.com. Services provided for individuals, businesses and attorneys. Fixed fee and independent contractor relationships available. For more information, contact pchristensen@utahestateplanners.com.

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COURT ORDERED CUSTODY EVALUATIONS John D, Perovich, Psy.D., a licensed clinical psychologist, provides expert court ordered custody evaluations and comprehensive psychological services from his main office in Layton and satellite offices in Salt Lake and Tooele. 1454 North Hillfield Road, Suite 1, Layton, Utah 84041. Phone (801)593-9145 Fax: (801)593-6033.

Membership Corner

UTAH STATE BAR ADDRESS CHANGE FORM

The following information is required:

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

***PLEASE PRINT**

1. Name _____ **Bar No.** _____ **Effective Date of Change** _____
Note: If you do not provide a date the effective date of the change will be deemed to be the date this form is received.

2. Business Address – <u>Public Information</u>

Firm or Company Name _____

Street Address _____ Suite _____

City _____ State _____ Zip _____

Phone _____ Fax _____ E-mail address (optional) _____

3. Residence Address – <u>Private Information</u>

Street Address _____ Suite _____

City _____ State _____ Zip _____

Phone _____ Fax _____ E-mail address (optional) _____

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

_____ Business _____ Residence

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

Signature _____

All changes must be made in writing. Please return to: UTAH STATE BAR, 645 South 200 East, Salt Lake City, Utah 84111-3834: Attention: Arnold Birrell, fax number (801) 531-9537.

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Rebecca Timmerman
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Tel: 257-5517

Certificate of Compliance

UTAH STATE BOARD OF CONTINUING LEGAL EDUCATION
Utah Law and Justice Center
645 South 200 East, Salt Lake City, UT 84111-3834
Telephone (801) 531-9077 Fax (801) 531-0660

For Years _____ and _____

Name:			**Utah State Bar Number:**			
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.