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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: Payson Canyon, Utah, by Bret B. Hicken, Spanish Fork, 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.

Supreme Court Committee on Delivery of Legal Services Submits Its Report

by John A. Adams

The Utah Supreme Court's Committee on the Delivery of Legal Services has completed its work and on September 5, 2002 submitted its report to the full Court. The report and its conclusions should be of interest to every Utah lawyer. At the risk of oversimplification,[1] the essence of the Committee's work has been to focus on which co-equal branch of government (the Legislature or the Court) governs the "practice of law"; survey the ways in which legal services are being delivered cost effectively to Utahns; and explore avenues by which competent legal assistance may be provided on a larger and more efficient scale to more citizens (particularly the middle class).

Many members of the Bar have seen Justice Michael J. Wilkins' (the Chair of the Court's Committee) excellent powerpoint presentation at either the mid-year meeting in St. George or elsewhere that explains the issues and the work of the Committee. In short, when the Bar and others realized that the Legislature in its 2001 repeal of certain statutes had also mistakenly repealed the unauthorized practice of law statute, legislation was introduced to reinstate the statute. Some legislators saw an opportunity to focus on the overall delivery of legal services in our state, based on their perception that there is a significant unmet need for legal services in the state and that the need is linked to the high cost of those services. An informal House committee held a hearing and proposed legislation. The result was that an unauthorized practice of law statute was enacted with a short sunset provision (originally set for May 1, 2002 and later extended to 2003) and the Court was requested to study six legislative findings.[2]

The Court immediately formed a committee, taking the unusual step of having two of its own members, Justice Leonard Russon and Justice Wilkins, serve on the Committee. Other members of the Committee are five legislators, one trial court judge, the state court administrator, the current and a former bar president, the bar's executive director, a public law representative and a public member. It was particularly worthwhile to have five legislators[3] actively participate in the Committee's deliberations. The Committee discussions were constructive and probing. Full consensus was not reached on all points, but no issue divided the Committee or resulted in the offering of a minority report or position.

The Committee held nine monthly meetings in which it studied and heard presentations on a number of broad topics, including standardized court forms, use of technology, alternative dispute resolution, multidisciplinary practice (MDP), multijurisdictional practice (MJP), the role of paraprofessionals, self-represented litigants, charitable legal assistance, legal insurance and limited scope practice.

The Committee report takes issue with several of the legislative findings. For example, the Committee challenged "the suggestion that any broad category of non-attorney professionals currently provide competent legal assistance care to Utah's citizens with both low total costs and adequate guarantees of professional competence in areas *previously reserved by law to attorneys.*"[4] Concerning the increasing frequency of pro-se litigation, the Committee acknowledged that self-representation is a fundamental constitutional guarantee but observed that the exercise of that "right at times may not be necessarily in the best interests of some citizens" and imposes significant burdens on our court system. Pointedly stated by the Committee, just because a citizen has the constitutional right to control the course of treatment over his own body does not mean that he would be wise to take out his own appendix. Finally, with respect to the dramatic increase in the quantity of legal information available to the public, the Committee concluded that

technology "has not yet met the challenge of assuring that the information relied upon by our citizens is both accurate and applicable to the questions at hand."

The Committee concluded that the Legislature may define the unauthorized practice of law under current applicable case law, but the Utah Supreme Court, by constitutional mandate, exclusively governs the practice of law. The Committee encouraged cooperative efforts between the Court and the Legislature in undertaking any changes in the means of providing legal services. The Committee had high praise for the State's award-winning Online Court Assistance Program (OCAP) and felt that there is a need for the creation of additional reliable and legally accurate forms and an opportunity to better educate the public about the availability of these resources. The Committee strongly endorsed the use of alternative forms of dispute resolution. The Committee concluded that the suggestion that officers of small businesses be allowed to represent their companies in court was conceptually flawed. Certain business entities, like corporations and limited liability companies, are treated as distinct and separate persons for legal purposes so as to provide protection to their owners and managers from personal liability. If that shield to personal liability is to be maintained, then it becomes problematic to allow a business owner or officer – who may place his personal interests over those of other owners or shareholders – to represent the business entity.

The Committee's report embraces the conclusion that "competence is a bedrock notion of legal service." The Committee opposes any changes by which legal services "provided to the public would result in a decrease in the competence of those authorized to provide legal care." The Committee was supportive of the adoption of MJP[5] and felt that further study should be given to the concept of "unbundled" legal services.[6] Non-legislators on the Committee felt a need to emphasize that many of the Committee's recommendations carry a significant price tag to implement (*e.g.,* assistance to self-represented litigants, government funding of alternative forms of dispute resolution, or support of lower cost attorney assistance provided on court premises). Currently, virtually all of the legal assistance for Utah citizens is financed by persons other than the State.

Finally, the Committee concluded that the Bar can assist in

providing more helpful information and lower cost legal services to the public. The Bar leadership believes that there are both unutilized and under-utilized competent and experienced lawyers who can provide legal services on a cost-effective basis to Utah citizens. Debra Moore, the President-Elect, is chairing a task force to study this subject and consider the feasibility of developing a web-based system to assist the public in tapping into the resources lawyers can offer. For more details, see the side bar article by Debra Moore. Providing legal services to a greater segment of our fellow citizens is an opportunity and responsibility that we as a profession should not shun, but eagerly address and be at the forefront in shaping solutions. We will keep you informed about the Bar's efforts in this regard and keep you updated about the actions of the Court and Legislature.

[1] My intent in this article is to present a fair summary of the Committee's report. However, the views I express are my own – from my perspective as a Bar representative and as a single Committee member – and not necessarily those of the entire Committee.

[2] The six legislative findings were: (1) There is a significant unmet need for legal services within the State of Utah; (2) This need for legal services is linked in part to the high cost of those services; (3) This unmet need for legal services adversely impacts the health, safety, and welfare of Utah citizens; (4) In many situations, non-attorney professionals now provide, at low cost to consumers with adequate protections, services previously reserved by law to attorneys; (5) The right of a person to represent himself and his interests in a court of law is a recognized right in our legal system; and (6) Recently enhanced technological capabilities have helped people access information needed to handle their own legal issues.

[3] Senators Michael Waddoups (R – Taylorsville) and Karen Hale (D – Salt Lake City) and Representatives Greg Curtis (R – Sandy), Steve Urquhart (R – St. George) and Patrice Arent (D – Holladay).

[4] The Committee, however, did acknowledge the law-related activities of CPA's, real estate agents and brokers, title insurance and real estate closing agents and the reliable counsel they provide in their individual areas of expertise.

[5] It should be noted that Justices Russon and Wilkins abstained from votes about MJP since a Bar petition to allow MJP was then pending before the Court.

[6] Unbundled legal services would permit a lawyer to perform certain clearly-defined, discrete tasks without assuming responsibility for other aspects of a client's legal matter.

Utah State Bar Explores Delivery of Legal Services to Middle Class

by Debra Moore

Last summer, the Utah State Bar Commission formed a small task force to explore the Bar's role in addressing the perception of state legislators and others that a significant unmet need for legal services exists among middle class Utahns. The Commission received an update on the work of the Supreme Court's Committee on Delivery of Legal Services and met with Committee member and state representative Steve Urquhart. The task force wanted to be well-prepared for any recommendations that the Committee might make to the Bar. The task force consisted of Bar President-Elect Debra Moore as Chair, Bar Executive Director John Baldwin, and Commissioners D'Arcy Dixon Pignanelli (one of two public members), David R. Bird, Nanci Bockelie, and George Daines.

Early on, the task force decided that it was important to hear directly from the sector of Utahns at issue. Although we could make educated assumptions about the existence, extent, and nature of the need, we felt it important to set those assumptions aside and simply listen. With the Commission's approval, we hired an independent research firm that conducted five focus group sessions around the state in early September. Two sessions were conducted in Salt Lake City and one each in Ogden, Provo, and St. George.

The sessions were powerful in communicating how Utahns perceive their access to legal services. Strong, consistent themes emerged about the perceived barriers to obtaining legal services. Those themes include:

- Difficulty estimating the total out-of-pocket costs for a legal matter;
- Generalized distrust of lawyers;
- Reluctance to litigate;
- Lack of awareness of the preventive value of legal services;
- Not knowing how to select a lawyer despite a sense that plenty of lawyers are available;
- Lack of awareness of ADR and other alternatives;
- Uncertainty about the outcome of availing legal services; and
- Questionable value for the dollar as a result of few perceived tangible benefits

While pursuing the focus group research, the task force also explored the concept of developing a web-based clearinghouse of information about legal services. We envisioned a consumer-friendly site that would provide:

- Utah-specific information;
- General information on how to select and evaluate an attorney, what to expect from an attorney, and how to address problems should they arise;
- Modules providing topic-specific information, including forms, in commonly needed areas such as family law, wills and estate planning, landlord-tenant law, consumer law, and so on;
- Information about ADR, small claims court, pro se assistance, unbundled legal services, and other alternatives to the traditional, full-service model;
- Links to other helpful resources, such as the On-Line Court Assistance Program;
- Lawyer referral services, including referrals to attorneys on

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reduced-fee panels and unbundled services panels; and

- Attorney listing service providing useful and credible information, including some information that is seldom found in advertising, such as specific information about areas and types of practice experience, disclosure of malpractice insurance, and disciplinary record, with links to attorneys' own websites (preceded by a conspicuous disclaimer).

The task force identified many concerns about the envisioned site, such as the costs and logistical difficulties of keeping the site current, the possibility that some information could mislead potential clients about their particular situation, and controversial elements of the attorney listing service. Nevertheless, the results of the focus group research have encouraged us to pursue the concept. We believe that the critical issues are: (1) whether the site is economically feasible, which will require creating low-cost methods of making the site well-known to the public (including those who do not normally use the internet), and (2) whether the site will provide enough useful and credible information to reduce distrust of the legal profession and facilitate access to legal services.

Although the task force has initially concentrated on the website concept, we are also exploring other approaches to the access issue. The website would include elements such as the creation of forms and panels of attorneys willing to provide unbundled legal services or services at a reduced fee. Similarly, other methods of community outreach, such as speaking at libraries, PTA meetings and the like, or holding pro se divorce clinics, are promising. Laws, regulations, and procedures that increase the cost of providing legal services bear examination. The Bar concurs with members of the Supreme Court Committee that meaningful study and change will bear a significant cost. That cost does not fairly rest at the feet of the Bar and its members.

The task force met with Bar section and committee leaders about these issues in October and expects to report to the Commission around the end of the year. We would appreciate any comments you may have. You may direct them by email to jbaldwin@utahbar.org, or by letter or phone to any of the task force members.

Practice Pointer: The Rule Against Threatening Criminal Prosecution to Gain an Advantage in a Civil Matter

by Kate A. Toomey

In law school, many of us learned a professional ethics rule proscribing threatening criminal prosecution to gain an advantage in a civil matter. Shortly after I began working for the Office of Professional Conduct, the office received an informal complaint alleging that an attorney had violated this rule. I read and re-read the Rules of Professional Conduct (RPC) without finding what I was looking for, then confessed to someone with superior knowledge that I couldn't find the rule, although I knew it existed. I was amazed to learn that although Utah at one time had such an explicit rule,[1] it was omitted from the current rules. I'm not the only one to make this mistake: the OPC regularly hears from attorneys on its Ethics Hotline who want to know where to find the rule. This is what I tell them.

Several RPC govern an attorney's permissible conduct in negotiating settlements on a client's behalf. For example, the rules provide that "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." Rule 4.4, RPC. The rules also provide that "In the course of representing a client a lawyer shall not knowingly: . . . Make a false statement of material fact or law to a third person." Rule 4.1(a), RPC. They also provide that "A lawyer shall not . . . offer an inducement to a witness that is prohibited by law." Rule 3.4(b), RPC. Moreover, "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, . . ." Rule 3.1, RPC. Additionally, "It is professional misconduct for a lawyer to: . . . Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects" or to "engage in conduct that is prejudicial to the administration of justice." Rule 8.4(b) & (d), RPC.

Essentially, these rules exhort attorneys to engage in honest, fair play in their dealings with people other than their clients. They obviously apply to all of an attorney's conduct on behalf of a client, not simply the end stages of the representation. But collectively, they also prohibit threatening criminal prosecution solely for the purpose of negotiating a favorable settlement in a civil action – something on the order of theft by extortion within the meaning of the criminal code.[2] The rules also, obviously, overlap in their application.

Does this mean that the mere mention of the possibility of criminal charges being brought is off-limits? The answer is no. The ABA Ethics Committee has issued an opinion holding that an attorney may use the possibility of bringing criminal charges against an opposing party in a private civil matter as long as the civil matter and the criminal matter are related and warranted by law and fact, provided that the attorney does not try to influence the criminal process. ABA Op. 92-363 (1992). By the same token, unless doing so would violate other legal duties, such as the child abuse reporting statute,[3] an attorney may agree to refrain from presenting criminal charges against an opposing party as part of a settlement.

Wrongful conduct, including criminal conduct, dishonesty, and deceit are forbidden. The rules allow lawyers to make truthful observations – it's permissible, for example, to point out that the opposing party's actions could be subject to criminal prosecution – but not to participate in extorting money from the other side. Discipline cases from other jurisdictions illustrate what is not

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permissible.[4]

I urge ethics hotline callers to make certain that their clients understand the limits of what an attorney can do. Tell them you cannot and will not do it. Making idle or dishonest or frivolous threats is inconsistent with every lawyer's obligations under the RPC. Nevertheless, discussing the criminal implications of a party's conduct is not necessarily forbidden. For example, your business client negotiating an appropriate resolution for an instance of theft by an employee who is not in a fiduciary role with the business or its clients, might legitimately explore refraining from reporting the matter for criminal prosecution in exchange for repayment of the money. What is not permissible is demanding huge sums of money in exchange for not reporting the theft. If you know your client would never under any circumstances refer a matter for criminal prosecution, it is wrong to threaten such action.

Returning to the question about the RPC, the answer is that there is no explicit rule, and yet the prohibition implicitly remains in the overlapping application of several of the other rules. If you are honest in your dealings with others, and mindful of the rule prohibiting attorneys from engaging in criminal behavior, you are unlikely to run afoul of these provisions.

1 DR7-105(A) of the predecessor Model Code barred lawyers from presenting, participating in presenting, or threatening to present criminal charges "solely to obtain an advantage in a civil matter." The latest version of the Model Rules eliminated this provision because it was viewed as redundant and overbroad. *See* Annotated Model Rules at 427.

2 *See* Utah Crim. Code § 76-6-406. The statute provides that "A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof." Utah Code § 76-6-406(a). Extortion includes a person threatening to "[a]ccuse any person of a crime;" causing official action against someone, or doing "any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person's health, safety, business, calling career, financial condition, reputation, or person relationships." Id. at (b).

3 *See* Utah Code § 62A-4a-403.

4 *See e.g. Louisiana State Bar Ass'n v. Harrington,* 585 So.2d 514, 520 (La. 1990) (lawyer's letter stating "If we do not receive this information [concerning the identity of an insurer] within ten days of the date of this letter, I will seek to have felony criminal charges pressed against you and seeked [sic[to have you expedited [sic] from the State of Texas to Louisiana, where you will face criminal charges."); *In re Yao,* 661 N.Y.S.2d 199, 201 (N.Y. 1st Div. 1997) (agreement to refrain from public revelation of information concerning person's personal life in exchange for payment of large sums of money).

A Few Words of Caution About Computer Presentations

by Francis J. Carney

EDITOR'S NOTE: *The following is based on a presentation originally given at the Annual Meeting of the Utah State Bar, Coronado Hotel, San Diego, California, July 2000, and recently updated.*

A few years ago, Gen. Hugh Shelton, then-Chairman of the Joint Chiefs of Staff, issued an order to all United States military personnel to stop using presentation software in their e-mail briefings. The reason? All the bells and whistles were clogging the armed forces' limited bandwidth and, more importantly, detracting from junior officers' attempts at conveying essential information.[1]

Louis Caldera, the former Secretary of the Army, suggested that PowerPoint presentations are alienating lawmakers: "People are not listening to us because they are spending too much time trying to understand these incredibly complex slides."[2]

Edward R. Tufte, the guru of information graphics and author of "The Visual Display of Qualitative Information"(1983) notes a dismaying trend toward what he calls "chart junk" (meaningless tricks done only because the program allows them to be done), and visual flash and dash instead of real analysis of useful information.[3]

In her entertaining article, "Power Pointless," Rebecca Ganzel points out that electronic presentations divert the attention of both audience and speaker from the presenter's message to what is essentially a series of pictures. "The slide show, once peripheral to a presentation ....has become its center, even its reason for being."[4]

The excuse that half the audience may be "visual learners" doesn't cut it: even visual learners learn from *graphics,* not word-chocked bullet slides. We can't expect an audience to absorb information simultaneously from both the ear and the eye.

PowerPoint[5] can become a crutch for the nervous speaker to get through a presentation; any good presentation will have the presenter as its prime focus, not the graphics. As Ms. Ganzel notes, it sets up the novice speakers for what they really want to do anyway: take a back seat to their visuals. In trial we might as well just send a memo to the jury rather than make a closing argument.

The lure of PowerPoint has caught on, belatedly, in the legal field. I do not quibble with the idea that a good visual exhibit will enliven any argument, and I was an early advocate of the use of PowerPoint in the courtroom. My suggestion is merely that a little moderation in embracing computer visuals is needed.

Thoughts on Effectively Using PowerPoint

First, ask if computer visuals are going to add anything that cannot be done better with posterboards, blowups, or simply your own voice. Graphics are especially suited for presenting matters of size, distance, and quantity. But this isn't always the case.

Suppose we wanted to convey the relative size and distances of the planets in the solar system. We could put together a visual like something out of *National Geographic.* Or we could paint a word picture for our audience:

> *Imagine a stellar salad. The Sun would be a pumpkin about a foot in diameter in the center.*
>
> *The first planet, Mercury, would then be the size of a tomato seed about 50 feet away. Venus would be a pea about 75 feet away, Earth would be a pea about 100 feet away, and Mars would be a little raisin about 175 feet away.*
>
> *The gas giant, Jupiter, is an apple two football fields away, the ringed Saturn a peach a thousand feet away, Uranus a plum two thousand feet away, and Neptune another plum 3225 feet away.*

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Tiny Pluto, the last planet in our solar system, is the size of a strawberry seed and a mile from our pumpkin, the Sun.[6]

Which is more effective?

A persuasive speaker is diminished, not aided, by overuse of visuals. What comes to mind when we think of Ross Perot? Probably not "great speaker," but more likely "that odd little guy with all the charts."

Can you imagine PowerPoint adding something to Henry V's speech to his cornered, ragged band of brothers before Agincourt? Or Churchill's stirring words in the black days of the summer of 1940 about fighting the Nazis on the beaches, on the streets, and never surrendering? True, most of us aren't and never will be speakers of that caliber, and so can always use visuals to bolster our arguments. The key, again, is moderation and a little foresight.

I highly recommend the short paperback *The Articulate Executive* by Granville N. Toogood (McGraw-Hill 1995). Chapters 22 through 25 of Mr. Toogood's book are a must-read for anyone – lawyer or otherwise – contemplating the use of a computer-assisted presentation in a speech. Mr. Toogood suggests that slides be *only* used for graphics (not words) and that they should only be seen *after* the speaker has already made the point, as a kind of reinforcement.

Computer-assisted presentations *can be* highly effective – if not unequaled – for the presentation of visual evidence, such as reconstructions or deposition excerpts. Much of the brain work of a trial lawyer ought to be devising demonstrative exhibits to make the points. They are wonderful for:

- Photographs
- Video deposition excerpts
- Trial testimony video excerpts
- Charts (of the intelligible variety)
- Simulations and reconstructions
- Diagrams
- Copies of exhibits (if used sparingly)

Stay away from the "Mitch Miller" approach.

If you find it necessary to use bullet slides, follow these suggestions:

- Use a standard template provided by the software program – do not attempt to create your mix of colors and fonts.
- Use only one template throughout the presentation
- No more than three or four bullet points on a slide.
- No more than five words per bullet point.

In other words, keep it simple. The novice is irresistibly inclined toward making slides *too busy,* with too many (often clashing) colors, too much verbiage, too many fonts, and unnecessary fripperies, such as animation and sound.

A *physical* exhibit – like a blowup – is often a better way to go on key exhibits. If put into a computer presentation, it disappears once the next slide appears. A blowup stays right there in front of the jury. Blowups, therefore, are still the better option for something that's going to be used time and again during the trial, like a crucial document page or photograph.

I find myself drawn back to the plain old white flip sheets. You know, the time-tried method of writing as you speak to the jury or witness. The flip sheet is more flexible during argument to the jury because it puts the attention back on you and not on the screen, and it can even be used to jot down pre-written points to remind you of your argument. The power of your personality, the truth in your words; these are the things that will convince people

of your case. Your voice and, equally, if not more important, your eyes, show them the way.

Preparation and Practical Considerations

Then there are the practical considerations:

- Check the brightness (lumens) of your projector. The newer ones will not require much darkening of the courtroom. Your projector will normally be rented; find the newest and brightest and don't worry about the weight. (Lighter weight usually means dimmer output.)
- Know how to use the input/output controls on the projector and how it interfaces the notebook computer *before* stepping into the courtroom.
- Test the *noisiness* of the fan. (This can be surprisingly distracting in a quiet courtroom.)
- Turn off all power management and screen savers before your presentation. (Otherwise you may find your vacation photos popping up in the middle of your closing argument. Worse, the screen may go blank.) In Windows, go to the Control Panel, click on "Power Management," and turn off all power management options. For the screen saver, right click anywhere on the Desktop, left click on "Properties," and go to "Screen Saver." Make sure it says "none."
- When creating a presentation, use the TIFF format for documents and JPEG for photographs. Learn to save in these formats. Otherwise, your presentation file will rapidly become huge – and slow.
- Get a remote control for the computer and familiarize yourself with it. That way you won't need to run back to counsel table or the lectern to change slides.
- On the topic of remote controllers, remember that infrared is line-of-sight but RF (radio frequency) allows you to roam anywhere. Use RF (radio frequency) instead of infrared – the latter requires a line-of-sight connection and necessitates "pointing" at the receiver.
- I have stopped using laser pointers in courtroom arguments where the screen is in reach. They detract from the message and distance you from the jury. Of course, in lecture halls, with larger screens, they may be necessary.
- Don't stand back and "watch" the slide show with the jury. Stand at the screen, in their line of sight, and point things out on the screen as needed – just like the television weatherman does it. Obviously, this requires an assistant or a remote control device.
- Use the "B" key to blank the screen while making key points – the focus shifts back to you, the speaker, when the screen is black.
- Back up your presentation program under separate names, for example, "Closing – 1." Simply use the "save as" function and remember to then *close* the file and go back to working on your original. (This will spare you the agony of losing it all ninety percent of the way through.)
- Go to court and familiarize yourself with the layout. Where are the power sockets? How much power cord do you need? Does the clerk/bailiff have any special concerns?
- One final, but critical point: *Talk to the courtroom staff.* These people know their business and are willing to share their knowledge with you. As lawyers, one of our great faults is looking down our collective noses at courtroom staff and they rightfully resent it. These people know more about the courtroom environment than we do. They have suggestions and ideas that are worth listening to.

Although most of these suggestions are obvious you'd be amazed at how many times I've seen (and heard judges report) attorneys fumbling over their equipment.

The final point of preparation is to consider this: what are you going to do if your computer crashes? Always, always, have an alternative if disaster strikes.

Checklist for Your Presentation

Perhaps I am more forgetful than most, but I strongly recommend that you keep a checklist of everything that you will need in your presentation. Here's my list:

- Notebook computer (at least Pentium Classic, preferably P4. Many professionals use a second laptop loaded with the identical presentation for backup at trial.)
- Projector
- Connector cable from projector to notebook.
- Screen (and learn how to extend it!)
- Mouse (built-in mouse substitutes are unwieldy)

- AC adaptor for the laptop
- USB port multiplier (many laptops have only one or two USB ports.)
- Power cord for the projector
- A "power strip," fifteen-foot extension cord, and extra three-prong extension cords
- Remote control for computer, with extra battery – use RF, not infrared.
- Small screwdriver for making connections on connector cable
- Extra bulb for the projector
- Two rolls of duct tape for restraining power cords
- Paper copy of slides (in case all fails)

Get a Geek

A technogeek who understands how everything works is also nice, if only for your peace of mind. Learning all of the necessary details and remembering them under the pressure of a trial is a lot to expect. You don't have time to learn all of this just before trial and you should not be distracted by it. There are people who will handle it all, and do it well, for a fee.

Other Programs

PowerPoint and Presentations are simple programs to use. But they are the basics: no power steering, no power windows, no air conditioning. There are more powerful programs available for the display of graphic information in the courtroom. These programs carry many outstanding features, such as allowing you to display video deposition testimony with the transcript appearing underneath the monitor frame, present documents on-screen that can be highlighted, marked, and otherwise manipulate exhibits and graphics. They are also "non-linear" and "on-the-fly" programs that allow you to manipulate images on the spot without going through the next slide/next slide pre-designed approach of PowerPoint.

Perhaps the best-known of these products is "Trial Director" from InData Corporation, 800-828-8292 or www.indatacorp.com. This was the program (in conjunction with "Summation") that was used to such effect against Microsoft by the Department of Justice in the 1999 antitrust bench trial.

A competitor is "Sanction" trial presentation software from Verdict Systems LLC, www.verdictsystems.com, or 490-627-2430. Recently the "Visionary" program has begun to be distributed for free over the internet. The writers claim it will do everything that the $600 Sanction and Trial Director programs will – and at no cost. Find it here: www.visionarylegaltechnologies.com

A presentation can even be done in simple .html format – just like web pages – by using such software as MS Publisher or the equivalent.

Conclusion

After seven years of using PowerPoint and other computer-generated programs, I find myself using them less often in court, not more. Other attorneys have told me that they share this phenomenon – more familiarity, less enthusiasm. In its place, the computer adds to an effective trial presentation. Used poorly, it has the opposite result. *Caveat emptor.*

[1]Greg Jaffe, *What's Your Point, Lieutenant?,* Wall Street Journal, April 26, 2000. Also, be sure to take a look at the "PowerPoint Ranger's Creed" in the materials.

[2]*Id.*

[3]David Corcoran, *Campaigning for Charts That Teach,* New York Times, February 6, 2000.

[4]Rebecca Ganzel, *Power Pointless,* Presentations Magazine, February 2000. Found at www.presentations.com. This on-line magazine is an excellent source of commentary and reviews on presentation software.

[5]PowerPoint® is the Microsoft brand of computer presentation software. Presentations® is the equivalent from Corel, the makers of the Word Perfect suites. If you own either Microsoft's or Corel's office suites, you probably also own their respective presentation software package.

[6]Shamelessly stolen from "Ask Marilyn," by Marilyn Vos Savant, in *Parade Magazine,* April 30, 2000.

Are You Riding a Fine Line? Learn to Identify and Avoid Issues Involving the Unauthorized Practice of Law

by Debra Levy Martinelli

Sometimes it's black. Other times, it's white. But most of the time, it's a murky, muddy gray. The unauthorized practice of law (UPL), say lawyers, legal educators and paralegals alike, is often hard to identify and still harder to define.

Some cases of UPL are easily recognizable: The person without a license to practice law who advises his or her so-called clients on how to avoid bankruptcy proceedings, or the one who – absent statutory or rule authority – appears at a court proceeding as an advocate for a client. But it's much less clear when the practitioner is what has come to be known as a traditional legal assistant – someone trained and educated in the paralegal profession, often with years of experience, who works under the supervision of licensed attorneys. Can traditional paralegals tell a client in a litigation matter what to expect procedurally without crossing the line into giving legal advice? Can you observe a deposition without a supervising attorney being present? Can you handle real estate closings outside the presence of an attorney? Can your name be included on firm letterhead and, if so, are there restrictions?

These are the types of questions paralegals at all experience levels face on a regular basis. The answers, however, are not always obvious and may vary from jurisdiction or jurisdiction. The American Bar Association (ABA), the National Association of Legal Assistants (NALA), National Federation of Paralegal Associations (NFPA), state and local legal assistant organizations and most states have developed guidelines, ethical canons or statutes to help define the practice of law. But even those who deal daily with the issue of UPL admit that it can be tough to pin down what does and doesn't constitute the practice of law.

"It's nearly impossible to draw a line between what is and isn't UPL when a paralegal is working under the supervision of an attorney," said Thomas E. Spahn, a partner at McGuireWoods in McLean, Va., who spends the bulk of his time advising his 550-attorney firm on issues of ethics and conflicts and lecturing on those subjects to others. "It's a very quirky area."

The Law, the Rules and the Guidelines

Limitations on the practice of law in the United States date back more than 200 years. A proliferation of untrained practitioners during colonial times "caused local courts to adopt rules requiring attorneys who appear before them to have a license granted by the court," according to "The Concise Guide to Paralegal Ethics," published by Aspen Law & Business, 2001 and written by lawyer and educator Theresa A. Cannon. These rules were adopted in part to "stop incompetence that harmed not only the clients but the administration of justice and dignity of the courts."

According to Cannon's book, UPL is a misdemeanor in more than 30 states and subjects a person to civil contempt proceedings in more than 25 states. But criminal prosecution is reserved for the most egregious cases. "[Criminal] prosecutions generally arise only if someone, like a disgruntled customer or a lawyer, complains," explained Cannon, consultant to and former member of the ABA's Standing Committee on Legal Assistants. "There have been some [prosecuted] in Florida, California, Tennessee and Illinois but not in many other places."

Crossing the Line

One such Florida case involved Jesse Toca, who operated an independent paralegal business and was convicted in 1998 on six first-degree misdemeanor counts for promoting a "pay for delay" scheme in which people facing mortgage foreclosures hired him to file motions and provide advice resulting in delays in the litigation. While UPL actions in Florida are usually handled through civil proceedings, prosecutors determined Toca's activities were particularly harmful to the public. A trial, Toca didn't deny his actions, maintaining he didn't know what he was doing was

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unlawful. The jury was not convinced. After the verdict, one juror called him "the epitome of what paralegals do not want in their field. . . . He was definitely practicing law. He was telling his clients what to do and how to do it."

The Toca case is a UPL example in the extreme. In the day-to-day practice of a legal assistant, the question always looms: Where is the line drawn between what is and isn't the practice of law?

State Variations

Today, there is wide variation of UPL regulations. "Control over the practice of law is vested in the states, not the federal government, so naturally there are different views on areas like UPL," Cannon said. "The regulations are usually in the form of state statutes that prohibit the unauthorized practice of law. They are fairly uniform."

The California Business and Professions Code, for example, states, "No person shall practice law in California unless the person is an active member of the state bar." Further, "[A]ny person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the state bar, is guilty of a misdemeanor" (Calif. Business and Professions Code, §6125-6140.05). Similarly, the law in the Commonwealth of Virginia states that those who hold a license or certificate to practice law under the laws of the commonwealth and have paid the license tax prescribed by law may practice law there, but violators could face a misdemeanor penalty (Va. Code §§ 54.1-3900 and 54.1-3904). A handful of states, including Arizona and Iowa, are without any UPL statutes. But according to Fran Johansen, UPL counsel for the State Bar of Arizona, some of those states deal with UPL through a state Supreme Court rule.

"The variation [in state statutes] comes in when these laws are applied to actual instances of UPL that are the subject of criminal prosecution or civil lawsuits," Cannon explained. "Since the courts can only decide what comes before them, there will always be some variation."

The ABA's View

Like the states, the ABA is loath to adopt a narrow definition of the practice of law. Its Model Code of Professional Responsibility EC 3-5 states, "[I]t is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law."

Spahn noted the ABA rules also acknowledge lawyers, in their practice of law, may rely on paralegals, but must avoid assisting others – including paralegals – in the unauthorized practice of law. "ABA Model Rule 5.5(b) states that, 'A lawyer shall not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law,'" he said.

The Black and White Prohibitions

Most bar or state definitions of the practice of law generally prohibit the following activities by nonlawyers:

Establishing an attorney-client relationship. Lawyers' relationships with clients are governed by statutes and ethics rules that hold them to a high standard of care in serving those clients. Communications between attorney and client are protected by the attorney-client privilege. Many courts have ruled that privilege extends to nonlawyers only when they are acting under the direct supervision of a lawyer (see discussion of *HPD Laboratories, Inc., v. Clorox Co.,* below)

Setting fees. Fee setting is considered part of establishing the attorney-client relationship. Consequently, only an attorney can contract with the client for legal services and determine the fees charged for those services.

Representing a client in court or acting as an advocate in a representative capacity. Court appearances, taking or defending depositions or engaging in substantiative negotiations with adversaries typically require the skills and knowledge that only a trained, educated and experienced lawyer can provide. However, paralegals can provide valuable assistance at trials, hearings and depositions by reviewing relevant documents, identifying areas of questioning, helping to prepare witnesses and assisting with the introduction of evidence.

Providing legal advice. Like appearing in court on behalf of a client, providing legal advice can be undertaken only by someone who has the necessary knowledge of law gained through education, training and experience. While Cannon noted that the concept of giving legal advice is complex and has a lot of gray areas, generally, it consists of directing or recommending a course of action that might have legal consequences; explaining to a client his or her legal rights and responsibilities; evaluating the probable outcome of a matter; and interpreting the law.

The Struggle Over Legal Advice

Cannon said the biggest potential UPL problem for paralegals working under attorney supervising may be drawing the line when it comes to giving legal advice when they communicate with clients. "They have to evaluate whether explaining something to a client constitutes legal advice or not," she said.

Take the case of Karen Peeff, a paralegal in the legal department of

Clorox Co. In *HPD Laboratories, Inc., v. Clorox Co.,* WL909258, D.N.J. (2001), a patent infringement and unfair competition action, HPD Laboratories sought production of a number of Clorox documents it claimed were not protected by attorney-client privilege because they were communications between Peeff and certain nonlegal department Clorox employees who came to Peeff for legal advice. The documents, primarily memoranda and e-mails, summarized advice provided by Peeff to the employees or conveyed her views about specific claims made by HPD Laboratories.

Peeff admitted she didn't consult with her supervising attorney or other in-house counsel prior to dispensing the advice documented in the materials. Further, she was the only legal employee involved in the communications with the nonlegal department Clorox employees on this matter.

In its ruling, the court addressed the attorney-client privilege issue but didn't address the underlying issue of UPL. "It's shocking that there was no UPL analysis in the decision," Spahn said. "Instead the judge determined certain information was no longer protected by the attorney-client privilege. As a result, Clorox was compelled to cough up documents regarding this paralegal's relationship with a client that otherwise would have been protected."

The issue was one of supervision. Had Peeff's activities in this particular matter been conducted under the direct supervision of an attorney, it's likely the court would have held that the documents were, in fact, protected. "While there is nothing wrong with Clorox employees using Ms. Peeff as a legal resource, there is also nothing privileged about their communications to her in this instance," the court wrote. "Clorox has not demonstrated that its employees conferred with Ms. peeff to obtain legal advice from counsel. Instead they endeavored to obtain her own views and opinions. Accordingly, their statements are not privileged." In supporting this position, the court cited previous cases that concluded privilege doesn't cover communications between a nonattorney and a client that involved the conveyance of legal advice offered by the nonattorney (*United States v. Kovel,* 296 F.2d 918 (2d Cir. 1961); *Byrnes v. Empire Blue Cross Blue Shield,* No. 98 Civ. 8520, 1999 WL 1006312 (S.D.N.Y. Nov. 4, 1999); *United States Postal Service v. Phelps Dodge Refining Corp.,* 852 F.Supp. (E.D.N.Y.) 1994)).

Drawing the Line

In some instances, legal advice has even been construed as giving legal presentations. In *Doe v. Condon,* 532 S.E.2d 879 (4th Cir., 2000), WL 718448, the question of UPL arose in the context of a paralegal teaching a seminar without an attorney being present.

The court held that a paralegal can't make unsupervised public presentations (in this case, the topic was estate planning) or conduct initial client interviews in which the paralegal answers legal questions. But the court made no distinction between general and specific legal questions, ruling that paralegal may not give legal advice, period.

Pamela Jo Packard, chair of NFPA's Ethics Board, advised paralegals struggling with whether they were engaging in UPL to think about the questions they were being asked and the answers they were giving.

"They need to ask themselves whether their answers sound like advice only an attorney could give," she said. In her own practice, her rule of thumb is this: "If the information is strictly procedural, I feel comfortable providing it to a client. But sometimes clients will ask me something that can only be answered by a lawyer, because it requires a legal judgment. In those cases, I tell the client that I'll convey the question to the lawyer and one of us will get back to him or her."

Full Disclosure

Closely tied to the issue of dispensing legal advice is the issue of what Spahn calls "holding out" – in his opinion, a critical issue for paralegals. "Because legal assistants work so closely with lawyers, they must be careful to avoid 'holding themselves out' as lawyers, either intentionally or unintentionally. When speaking or meeting with clients or the public, legal assistants must correctly describe their role," he explained. That extends to making sure they properly represent themselves in correspondence and on business cards.

"I worry about people being misled into thinking a paralegal is an attorney. If malpractice is committed, there could be an additional legal complaint that the client thought the paralegal was a lawyer," Spahn said.

He said he believes such violations are unlikely to occur in large firms such as McGuireWoods, because the paralegals in that type of environment work very closely with lawyers. However, similar violations may be more common in small firms or in solo practices where legal assistants are depended upon to move a matter forward from start to finish, Spahn explained.

Packard, however, said she believes traditional paralegals are unlikely to commit UPL. "I can't image that any paralegals working in law firms would be likely to commit UPL because of the fact that they're required to work under the supervision of attorneys,"

she said. "[When looking for UPL violations], the bar is looking for people out on the street who aren't supervised."

In her role as NFPA Ethics Board chair, Packard fields many requests for guidelines on what paralegals can and can't do. "There are people out there who don't think they are practicing law because they're just filing out forms for people for wills or divorces or simple entity organizations. But they have to decide which forms to use and that requires a legal judgment."

Spahn said that, although defining permitted activities is as difficult as defining those that are not permitted, several national ethics guidelines list activities in which a legal assistant may freely participate. For example, the NALA Model Standards, Guideline 5, states that, as long as legal assistants act with full disclosure (defined in NALA's Code of Ethics and Professional Responsibility as disclosing his or her status as a legal assistant at the outset of any professional relationship with a client, attorney, court or administrative agency, or member of the general public), they may:

- Maintain client contacts after creation of the attorney-client relationship
- Send and receive correspondence from clients and third parties
- Conduct factual investigations
- Conduct legal research under the supervision of an attorney
- Draft, for a lawyer's review, legal documents, pleadings, correspondence and other materials
- Summarize pleadings and depositions
- Accompany lawyers to and assist them with meetings and court proceedings.

Stephanie Mark, CLAS, NALA ethics chair and a 24-year paralegal veteran who has been with the firm of Hall, Still, Hardwick, Gable, Golden & Nelson in Tulsa, Okla. since 1984, said NALA doesn't deal with UPL *per se.* Instead, its approach is to educate its members on all aspects of ethics, including UPL, through its publications, meetings, seminars and Web site. "We don't see gray areas when it comes to UPL," she said. "We emphasize disclosure and also focus on what legal assistants cannot do, like give legal advice, establish the attorney-client relationship, set fees or appear in court or in an administrative proceeding unless expressly authorized by rule or statute. But it all goes back to educating on ethics." She cites the *Condon* case as an example of the types of decisions NALA monitors and updates its members about.

However, like Packard, she differentiates between how UPL relates to traditional paralegals and how it relates to people who "fill out forms and call themselves legal assistants," such as legal document assistants in California. The latter, she said, "we could talk about forever."

NFPA's Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement expressly prohibits UPL stating, "[A] paralegal shall comply with the applicable legal authority governing the unauthorized practice of law in the jurisdiction in which the paralegal practices" (EC-1.8(a)). It also specifies these guidelines for full disclosure:

- A paralegal shall clearly indicate his or her status and disclose it in all business and professional communications to avoid misunderstandings and misconceptions about the paralegal's role and responsibilities.
- A paralegal's title shall be included if the paralegal's name appears on business cards, letterhead, brochures, directories and advertisements.
- A paralegal shall not use letterhead, business cards or other promotional materials to create a fraudulent impression of his or her status or ability to practice in the jurisdiction in which the paralegal practices.
- A paralegal shall not practice under color of any record, diploma or certificate that has been illegally or fraudulently obtained or issued or which is misrepresentative in any way.
- A paralegal shall not participate in the creation, issuance or dissemination of fraudulent records, diplomas or certificates (EC-1.7(a)-(e)).

Packard said she believes all of the rules, codes and laws lead practitioners to one final truth: What is in the best interest of the client?

A paralegal for 30 years, the last 24 of which have been at Stoel Rives, in Boise, Idaho, Packard has come to trust her professional instincts about what she can and can't do.

"If it feels like giving legal advice and it sounds like giving legal advice, I don't do it," she explained.

Instead, she consults the attorney about the client's questions and gets back to him or her. After speaking with the attorney, she conveys his informational response.

Mark's advice is this: Err on the side of caution. "As educated individuals, we know what's ethical and what's not. In those situations when we are unsure, we should always, always go to an attorney."

Seven Cases That Shaped the Internet in 2001 or "The First Thing We Do, Let's Kill All the Lawyers"[1] Part III

by Miriam A. Smith

I. INTRODUCTION

In the April issue of the *Utah Bar Journal* we examined the issue of "new uses" of copyright material in cyberspace. The August/September issue considered the long-arm of Internet law and the circumstances under which Internet Service Providers enjoy immunity in cases of copyright infringement. We finish our series with a look at recent developments affecting online music including two relevant cases, *Bonneville International v. Peters,* 153 F. Supp. 2d 763 (E.D.P.A. 2001) and *Rodgers and Hammerstein v. UMG Recordings,* 2001 U.S. Dist. LEXIS 16111 (S.D.N.Y. 2001).

II. THE "WONDERS" OF A SONG

O wonder!
How many goodly creatures are there here!
– THE TEMPEST, Act 5, scene 1

A recorded song is truly a wonder of the modern world. The first commercial sound reproduction device was the graphophone which used wax cyclinders as the recording medium. The graphophone was devised in 1877 by Chichester Bell and Sumner Tainter.[2] Flat discs, or records, were developed in 1888 by German-American Emile Berliner.[3] Today music is estimated to be a $40 billion global industry with the United States accounting for one-third of the world market.[4]

However a recorded song is more than "a" wonder: one recorded song is, like all works of recorded music, the result of the marriage of two "goodly creatures" – the **musical work** and the **sound recording.** The musical work is the musical composition including the accompanying words,[5] while the sound recording is the recording itself, i.e., the work that results "from the fixation of a series of musical, spoken, or other sounds."[6]

The musical work enjoys all the usual protections afforded "original works of authorship fixed in any tangible medium of expression"[7] by copyright law – reproduction, derivation, distribution, performance and display.[8] However, until 1995, sound recordings only enjoyed three of the five rights, reproduction, derivation and distribution.[9] The Digital Performance Right in Sound Recordings Act of 1995 (DPRA),[10] created a performance right for sound recordings if the sound recording is publicly performed "by means of a digital audio transmission."[11]

Before considering the digital world of online music licensing, a brief overview of analog music licensing in the offline world will be helpful in providing background and context.

III. ANALOG MUSIC LICENSING

Mad call I it, for to define true madness,
What is't but to be nothing else but mad?
– HAMLET, Act 2, scene 2.

The "madness" of music licensing lies in the fact that because one "song"[12] consists of two "creatures," one needs needs two licenses in order to use it in a film, video, television program or other visual work. An entirely different license is necessary to make a new recording of the "song" for release on "phonorecords."[13]

All licenses for use of the musical work are granted by the music publisher.[14] The license to reproduce the musical work as a new recording is known as a "mechanical" license. Section 115 of the copyright code (Title 17 of the United States Code) authorizes a compulsory license for nondramatic musical works where the musical work has already been distributed to the public.[15]

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The term "mechanical" arises from U.S. Supreme Court's 1908 refusal to find that player piano roll manufacturers had infringed the copyright of the music publishers.[16] The court reasoned that the perforated strips of paper (piano rolls) were not copies of the sheet music, but were "parts of a machine which, when duly applied and properly operated in connection with the mechanism to which they are adapted, produce musical tones in harmonious combination."[17] Dicta in the case similarly likened the wax cylinder "recordings" of the day to a part "of the mechanism of the phonograph."[18] The piano roll decision proved unpopular and Congress recognized these "mechanical" (reproduction) rights in the Copyright Act of 1909.[19]

Incorporating the song in a visual work. For this use one needs the "synchronization" or "sync" rights to the musical work – the right to reproduce and synchronize the music and lyrics with the visual images on the film, tape or other media. These rights are negotiated with the publisher.

In addition to a synchronization right, a performance right for the musical work is necessary. In a few instances, such as in the case of making a program for television, the performance right will be paid for by the television broadcaster.[20] If the visual work is to be performed in other venues, the performance right should be included in the sync license.

A third license is required to legally incorporate the song into the visual work – a master recording license[21] for the sound recording. The master recording license allows for the sound recording to be reproduced into the visual work's soundtrack. The copyright to the sound recording is generally held by the record label.

One complexity of obtaining the sync and master recording licenses arises from the not uncommon difficulty of determining and locating each rights holder. Copyrights may be split amongst a number of parties. Many songs also have many versions making it indispensable to ascertain the proper artist, version and record label of the recording for which the master use rights are sought.

The very validity of the copyright itself may also present a challenge. The determination of whether a work remains protected or has fallen into the public domain may require careful analysis. For works created on or after January 1, 1978, the term of the copyright is the life of the "author" (or last surviving "author") plus 70 years. The copyright for a "work-for-hire" runs the shorter of 95 from first publication or 120 years from creation.[22] Works published before 1923 are now in the public domain. While a complete discussion of determining the copyright term for works published or created between 1923 and 1978 is beyond the scope of this paper, a helpful chart highlighting the various copyright protection possibilities for these works has been created by Lolly Gasaway at the University of North Carolina and is available online.[23]

IV. DIGITAL MUSIC LICENSING

. . . O brave new world
THE TEMPEST, Act 5, scene 1

In the brave new online world, one finds all the analog rights of the musical work and sound recording, plus a new right for the sound recordings – a digital performance right.[24] This right was first created by the Digital Performance Right in Sound Recordings Act of 1995 (DPRA)[25] and expanded by the Digital Millenium Copyright Act of 1998 (DMCA).[26]

Legislative history suggests the DPRA was designed to protect record companies and recording artists from the threats of interactive and subscription digital audio services.[27] The more likely the use is to replace one's need and desire to purchase a physical copy of the sound recording (a phonorecord), the more likely the use will require negotiated licenses for the use of the sound recording.[28] Not to be ignored are the activities of various industry groups in influencing both the DPRA and DMCA.[29] The Recording Industry Association of America (RIAA) has been particularly effective in gaining protections from Congress.[30]

One way to sort through the various licensing requirements is to consider the matter from the website's point of view – how is the music being used on the website? The various uses include: a website that wants to include music as an incidental aspect of the site; a website that streams music to users on a non-interactive basis; a website that streams music to users on an interactive basis; and a website that allows users to download music.[31]

Website with Incidental Music. Many businesses may want to enhance their corporate website with music. Even though this type of online use has minimal impact on the market for the music used, it is not exempted from licensing requirements. It is analogous to the music used in a commercial or played over a store's sound system. When it comes to any public performance of even a small part of a song, fair use does not apply.[32]

Rights must be licensed from the music publisher and the record label.[33] From the music publisher one will want to obtain a mechanical license (to cover the reproduction of the musical work onto the servers); a performance license; and, if the music is synchronized with the website's visual images, a synchroniza-

tion license. From the record label the license should grant both the right to reproduce the sound recording and to digitally perform it.[34]

When dealing with a small number of "songs," it is likely easier to deal directly with the music publisher and record label. In the event that a large number of "songs" are slated for inclusion on the website, mechanical licenses may be obtained through the Harry Fox Agency[35] while blanket musical work performance licenses can be acquired through the appropriate performing rights societies, ASCAP,[36] BMI[37] and SESAC.[38] The record labels have likewise established the SoundExchange[39] to handle digital performance and reproduction (ephemeral copy) licenses for sound recordings.

Website that Streams Music on a Non-Interactive Basis. A listener may "tune-in" to a number of websites in the same manner one "tunes-in" to a radio station. These websites, or webcasters, have been referred to as Internet Radio and consist of both Internet-only webcasters and terrestrial radio stations retransmitting their signal online. These webcasters include those who offer their services on either a subscription or a non-subscription basis.

Both non-interactive subscription and non-subscription webcasters must obtain a performance license and a mechanical license from the music publisher. As to the license for the sound recording, a compulsory license may be available. Section 114(d)(2) of the Copyright Act sets out the requirements for the availability of a compulsory license for the digital sound recording.[40] If those requirements are not met, a voluntary license covering both the reproduction and performance of the digital sound recording must be obtained from the record label. SoundExchange administers the compulsory sound recording performance licenses as well as any necessary reproduction (ephemeral copy) licenses.

Internet Radio. Internet Radio music flourished after passage of the DPRA but was brought to a seeming standstill following implementation of the DMCA. The DPRA was designed to address concerns about the economic impact online subscription and interactive audio services would have on record sales. "[F]ree over-the-air broadcast services" were not addressed in the act.[41]

Three years later the DMCA, in an attempt to clarify matters, eliminated some exemptions and extended the compulsory license scheme. None of the changes were "intended to affect the exemption for nonsubscription broadcast transmissions."[42]

Within weeks of passage of the DMCA, the National Association of Broadcasters (NAB) claimed terrestrial radio broadcasters who simulcast their signal online were not covered by the DMCA and, therefore, did not have to worry about additional licensing of any digital sound recordings. This position was opposed by the RIAA and the issue was turned over to the United States Copyright Office.[43] The Copyright Office concluded that the exemption for "nonsubscription broadcast transmission" applied only to stations' over-the-air broadcasts in their local markets.[44]

It was this Copyright Office final rule that was at issue in *Bonneville International v. Peters.*[45] Salt Lake City-based Bonneville International was just one of the owners and operators of hundreds of AM and FM radio stations across the country seeking judicial interpretation of section 114(d)(1)(A) of the Copyright Act.

The court in *Bonneville* granted the Defendants' motion for summary judgment finding that the Copyright Office had the authority to make the final rule and that the final rule was in keeping with the language of the DMCA.

The holding of the court was based on a careful reading and construction of the words of the Copyright Act as it had been amended by the DPRA and DMCA. Finding that "the issue of whether FCC-licensed AM/FM broadcasters engaged in streaming are exempted from the public performance right in section 106 of the Copyright Act" had not been directly addressed by Congress,[46] the court upheld the Copyright Office's analysis "that the term 'nonsubscription broadcast transmission' was not intended to include AM/FM webcasting."[47]

> The court agreed with the Copyright Office that AM/FM webcasting is not conducted by 'terrestrial broadcast stations.' . . . While local radio stations are terrestrial in that they are literally grounded by their broadcast antennae and thereby limited to a geographic area, webcasts are made by computer transmitters which relay signals anywhere in the world, and are therefore not made by 'terrestrial broadcast stations.'[48]

The broadcasters had argued that the exemptions granted traditional over-the-air broadcasters in the language and legislative history of the DPRA were carried over to the DMCA. But the court disagreed with the broadcasters siding with the Copyright Office that the DPRA "exemption was enacted prior to the advent of AM/FM webcasting and that Congress at that time most likely did not foresee such activity."[49] Further, the court found persuasive the Copyright Office's reliance on statements made in Congress during the passage of the DMCA, that "at the time the [DPRA] was crafted, Internet transmissions of music were not the focus of Congress' efforts."[50]

Compounding webcasters' loss on the digital sound performance royalty issue was the amount of the royalty set by the Librarian of Congress in June 2002 – $0.0007 for every song heard by every 1,000 people.[51] Webcasters had proposed a royalty of $0.0015 per music webcast listener hour.[52] The result was that Internet Radio music virtually went offline while the various industries wrestled with the issue.

Fortunately, Congress recently passed legislation that reflects an agreement reached by webcasters and the recording industry to allow the royalty rate to be based on the webcaster's revenue.[53]

Website that Streams Music on an Interactive Basis. These websites allow a user to choose what music is streamed.[54] A user may select individual songs or create a personalized play list through these services. These services are more likely to have an economic impact on the market for sound recordings. Therefore, all licenses for such websites are voluntary – they must be individually negotiated with the rights holders. A mechanical license and a performance license must be obtained from the music publisher. A master recording license (for reproduction)[55] and a performance license must be obtained from the record label.

At issue in *Rodgers and Hammerstein v. UMG Recordings*[56] was whether a mechanical license was sufficient to allow a party to stream the licensed musical works over the Internet. UMG Recordings, Inc. is a major record company whose labels include MCA Records, A&M Records, Polygram Records, and Mercury Records.[57] Farmclub is a subsidiary of UMG Recordings. Farmclub notified the Harry Fox Agency of its intent to obtain a compulsory mechanical license for all of the musical works at issue in the case. In October of 2000, Farmclub began streaming Universal recordings over the Internet. Within days of beginning the service, Farmclub received objections from the National Music Publisher's Association that the musical works were not licensed for Internet streaming. Farmclub claimed that it held compulsory mechanical licenses for every musical work named in the lawsuit.

While there was some issue as to whether Farmclub had actually obtained the compulsory mechanical licenses or had merely requested such licenses, the court found that the compulsory mechanical licenses sought by Farmclub did not convey the right to stream the musical works online.

> It is obvious that Defendants do not want to pay the Plaintiffs the license fee for a record every time one of their customers listens to recording on the Internet. However, the only license that Defendants rely on here is one that is limited to the distribution of records to the public for which there is an established fee. Defendants choice is to obtain a license for that purpose and pay the fee or cease their infringing activity.[58]

Less than two weeks after the court decided *Rodgers and Hammerstein v. UMG Recordings,* the Recording Industry Association of American and the National Music Publisher's Association announced a new agreement confirming that mechanical licenses were necessary for streaming music on demand.[59] The compulsory rate is still under discussion.

Website that Allows Users to Download Music. Given the fact that this type of use is poised to directly replace traditional record sales. A mechanical license is necessary to cover the various reproductions of the musical work and a performance license is recommended.[60] As to the sound recording, a master recording license to cover the various reproductions is necessary and, like the musical work, a performance license is recommended. The sound recording performance license is clearly necessary where the person downloading the file may listen to it as it is downloading.

A Cautionary Note. Obtaining the necessary licenses from the various copyright holders is certainly necessary but it may not be sufficient. If the sound recording was made under the auspices of any of the relevant unions, the American Federation of Musicians, the American Federation of Television and Radio Artists or the Screen Actors' Guild, additional union clearances are necessary.

V. SUMMARY AND CONCLUSION

The seven cases examined in this series are certainly not the only Cyberlaw cases decided in 2001. Yet they do reflect the major developments in the areas of copyright new use, jurisdiction, liability, and online music.

Johannes Gutenberg, the most influential person of the last millenium,[61] may well shake his head at the wonder of the Internet, though he would not be at all surprised by the resulting legal problems.

1 William Shakespeare, The Second Part of King Henry the Sixth, act 2, sc. 2.

2 William J. Strong & George R. Plitnik, Music Speech High Fidelity 303 (2d edition 1977).

3 *Id.* at 303-04.

4 The Recording Industry Association of America: http://www.riaa.org/MD-Tracking.cfm

5 17 U.S.C. § 102(a)(2).

6 17 U.S.C. § 101.

7 17 U.S.C. § 102(a). While a discussion of the "originality" requirements of copyright law is beyond the scope of this article, "originality" does not require "novelty" only that the work was independently created by the author. *Feist Publications v. Rural Telephone Service Co.,* 499 U.S. 340 (1991).

8 17 U.S.C. § 106.

[9] *Id.*

[10] Pub. L. No. 104-39, 109 Stat. 336 (amending, *inter alia,* §114 and §115, title 17, *United States Code)*, enacted November 1, 1995.

[11] 17 U.S.C. § 106(6).

[12] "Song" represents all recorded nondramatic musical works of whatever genre.

[13] "'Phonorecords' are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term 'phonorecords' includes the material object in which the sounds are first fixed." 17 U.S.C. § 101.

[14] The music publisher typically holds the copyright in the musical work and serves as the work's agent in promoting use and recordings of the work.

[15] The parties may also negotiate a license for less than the compulsory rate.

[16] *White-Smith Music Pub. Co. v. Apollo Co.,* 209 U.S. 1 (1908).

[17] *Id.* at 31.

[18] *Id.* at 21.

[19] As of January 1, 2002, the statutory rate for the compulsory mechanical license was 8 cents per song up to five (5) minutes in length or 1.55 cents per minute for songs over five (5) minutes in length. The Harry Fox agency represents most music publishers in administering mechanical licenses.

[20] Broadcasters obtain a blanket public performance license from the performing rights societies, ASCAP, BMI and SESAC.

[21] Also referred to as a "master use license."

[22] 17 U.S.C. § 302.

[23] Lolly Gasaway, *When Works Pass Into the Public Domain* at http://www.unc.edu/~unclng/public-d.htm (last visited Nov. 17, 2002).

[24] ". . . in the case of sound recordings, [a right] to perform the work publicly by means of digital audio transmission." 17 U.S.C. § 106(6).

[25] Richard D. Rose, *Connecting the Dots: Navigating the Laws and Licensing Requirements of the Internet Music Revolution,* 42 Journal of Law & Technology 313 (2002).

[26] *Id.*

[27] S. Rep. No. 104-128, at 14-15 (1995) and H.R. Rep. No. 104-274 at 5-9, 12-13 (1995).

[28] Al Kohn and Bob Kohn, Kohn on Music Licensing 1302-05 (3d edition 2002).

[29] Kimberly L. Craft, *The Webcasting Music Revolution Is Ready to Begin, as Soon as We Figure Out the Copyright Law: The Story of the Music Industry at War with Itself,* 24 Hastings Comm. & Ent. L.J. 1 (2001).

[30] *Id.*

[31] There has been some disagreement as to whether musical work performance licenses are necessary for online download and whether mechanical licenses are always necessary. This article presents the conservative view, i.e., when in doubt, get a license.

[32] A discussion of Fair Use is beyond the scope of this paper.

[33] This article assumes that the music publisher and record label each hold the relevant copyright rights.

[34] Section 112 of the Copyright Act creates an exemption for one ephemeral copy to be made provided, among other things, the copy is not kept for longer than six months or kept solely for archival purposes. *See* 17 U.S.C. § 112.

[35] www.nmpa.org/hfa.html

[36] www.ascap.com

[37] www.bmi.com

[38] www.sesac.com

[39] www.soundexchange.com

[40] The requirements, influenced by the RIAA, include such matters as whether the webcaster was transmitting in the same medium on or before July 31, 1998; whether the transmission of the sound recording is encoded with certain information; the length of the program and the time period it would be available. There are also restrictions on how many song can be played, in any three-hour-period, from a particular album, boxed set or artist. Neither prior announcements or playlists may be made or published. And the webcaster must be proactive in protecting the copyright holder's rights in the sound recording. The complete list of requirements for the compulsory license is found at 17 U.S.C. § 114(d)(2).

[41] S. REP. NO. 104-128, at 15 (1995), reprinted in 1995 U.S.C.C.A.N. 356.

[42] H.R. CONF. REP. NO. 105-796, at 80 (1998), reprinted in 1998 U.S.C.C.A.N. 639, 656.

[43] In March of 2000, the NAB did attempt to circumvent any Copyright Office determination by filing suit in the United States District Court in New York. The suit was dismissed and the Copyright Office proceeded with its rulemaking.

[44] Public Performance of Sound Recordings, 65 Fed. Reg. 77,292 at 77,292 (Dec. 11,2000) (codified at 37 C.F.R. pt. 201.35).

[45] 153 F. Supp. 2d 763 (E.D.P.A. 2001)

[46] *Id.* at 779.

[47] *Id.*

[48] *Id.* at 780.

[49] *Id.*

[50] *Id.* at 780-81 relying on and quoting Staff of the House of Representatives Comm. On the Judiciary, 105th Cong., 2d Sess., Section-by-Section Analysis of H.R 2281 as Passed by the United States House of Representatives on August 4, 1998 at 51 (Comm. Print, Serial No. 6, 1998).

[51] 37 C.F.R. § 261 (2002) *available at* http://www.copyright.gov/fedreg/2002/67fr45239.pdf (last visited Nov. 17, 2002).

[52] *Webcasters Propose Sound Recording Performance Royalty at* http://www.digmedia.org/webcasting/CARP.html (last viewed Nov. 17, 2002).

[53] David Ho, *Congress Approves Royalty Rate Reprieve For Internet Music Broadcasters,* The Associated Press, Nov. 15, 2002, BC Cycle. As of press-time, the law had not been signed into law by the President.

[54] The streamed music is heard by the user without a permanent copy of the music left on the listener's hard drive.

[55] Unless the ephemeral copy exemption applies.

[56] 2001 U.S. Dist. LEXIS 16111 (S.D.N.Y. 2001).

[57] The argument behind this recommendation is that a "transmission" is a "performance." *See* 17 U.S.C. § 101: "To 'perform' a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible."

[58] *Id.* at 27.

[59] *Music Publishers Support Landmark Accord with Record Industry For Launch of Internet Subscription Services* at http://www.nmpa.org/pr/internet_subscription.html (last visited Nov. 17, 2002).

[60] A transmission is considered a performance.

[61] Agnes Hooper Gottlieb, Henry Gottlieb, Barbara Bowers and Brent Bowers, 1,000 Years, 1,000 People: Ranking the Men and Women Who Shaped the Millennium (1998).

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Remembering Ron Boyce – Teacher, Judge and Friend

EDITOR'S INTRODUCTION: *Ron Boyce's death brought sadness to our legal community. The* Utah Bar Journal *thanks Judge David Winder, Judge Dee Benson, Professor John Flynn and Dean Scott Matheson for allowing us to share excerpts from remarks they made at public and private memorial services. (The* Journal *has made minor transitional edits to convert the speakers' notes into this format, and chosen stories and commentary about Ron Boyce in preference to the speakers' personal feelings expressed in the privacy of the services.)*

Judge Ronald N. Boyce
Sep. 5, 1933 – Oct. 28, 2002

Judge Dee Benson

Ron Boyce was as good a friend as I'll ever have, and one of the most impressive people I've ever known. Now I know that sounds a lot like superlatives, but I don't know how else to say it. Ron Boyce was a very impressive man to me in virtually every way. He was smart, yet remarkably humble. He was extremely funny, but never seemed to be going out of his way for laughs alone. He was knowledgeable almost to a fault, yet he also had this endearing lack of awareness of certain aspects of popular culture. He was one of the most enigmatic people I've ever known. I know I'll never meet anyone else quite like him.

If I was ever a contestant on the television program "Who Wants to Be a Millionaire," there is no doubt who I would pick as the friend to call for help. Ron Boyce. He could tell you the death toll of an obscure 19th century battle in southern Africa and still have no clue who N'Sync is. And when one of my clerks would tell him N'Sync is the No. 1 boy band in America, he would say, "Who needs such useless information?" – to which I would be tempted to ask, "Well, who needs to know the death count of a 200 year old African war?"

It has become more and more apparent to me how much we all miss him, and how much of a presence he was in our lives. Part of that realization has come from a large number of spontaneous conversations with a large variety of people about Ron Boyce. It is quite a phenomenon, really. The conversation begins innocently enough, then automatically shifts into what I will call "Boyce-Drive" – going from one anecdote about Ron Boyce to another until an hour or so later everyone has laughed hard, smiled a lot, shared a lot, and feels better. The stories he has left us with are remarkable both for their sheer number and their variety. Many have said Ron Boyce had an incredible knowledge of the law, and he did, but we all know it didn't stop there. Law was just the catalyst, maybe the glue, for the large volume of stuff Ron was interested in: from science, to literature, to politics, to history, to anything that had to do with prisons, sheep, orangutans, mustangs (the automatic variety), the Russian mafia, street gangs, and the human genome project. Some of the most interesting conversations of my life have been with Ron Boyce.

Judge Dale Kimball told us one of his favorite Ron Boyce moments. Ron saw Dale in the hallway of the courthouse one day. Ron said he had a good idea that he wanted Dale to pass on to the general authorities of the Mormon Church. Ron said the church officials wouldn't listen much to Ron, but they'd probably listen to Dale. Dale said he'd be glad to pass along anything Ron wanted. Ron explained that for many years he had a habit of coming to work on Sunday mornings and he would always listen to the Tabernacle Choir on the radio. He said how much he enjoyed it. Dale then asked, "So what's your big idea?" Ron said, "Well, I just think the church is missing out on a good bet with that broadcast – they really ought to think about putting it on television." Dale said he just looked at Ron, one of the smartest men he'd ever known, and couldn't believe he had missed the fact that the Tabernacle Choir had been on television for the past 40 years.

That story caused one of my law clerks, Scott Bates, to remind us of the time he asked Ron a question that I think a number of us had always wondered about. He asked Ron if he was ever a member of any church. Ron said, "I guess in my early life I would have been considered a member of the LDS Church." "What led to the demise of that affiliation?" Scott asked. "I guess the onset of puberty had a lot to do with it," said Ron in one of our favorite quotes.

And someone else recalled Ron's classic rant from the bench about people who represent themselves in court. "There should be a special place reserved in purgatory for pro se plaintiffs," he often said. And that brought to Paul Warner's mind the only time he saw Judge Boyce visibly upset on the bench. A pro se defendant in a criminal fraud case told Judge Boyce that the reason he had missed a court deadline for filing papers was because the judge, meaning Ron, had been off on a vacation and therefore wouldn't have been around to read the papers anyway. He may as well have accused Ron of being a child molester. "I'll have you know I haven't taken a vacation since 1968," said Ron. It's hard to imagine anything more offensive to our Judge Boyce than an allegation that he had actually taken a vacation.

Dean Scott Matheson. In the last few days I've imagined what Ron might advise if I asked him for some guidance on what to say today. I can picture him leaning back in his chair and telling me that I could find what I'm looking for in volume 237 of the Pacific Reporter at page 145 in the second column at the top of the page. No one loved the law more than Ron Boyce loved the law. And no one loved teaching more than Ron Boyce loved to teach. What a perfect combination for a law school. The faculty and students at our law school have been blessed. Professor Ron Boyce — he loved being a law professor. And no one could profess like Professor Boyce. Henry Adams wrote that "a teacher affects eternity; he can never tell where his influence stops." Ron Boyce's influence runs wide and deep, and it will never stop.

As I responded this week to questions about Ron from news reporters, I would have to interrupt myself to explain that I really wasn't exaggerating what I was telling them about Ron. If he seemed larger than life, it's because he was, starting with his seemingly endless supply of knowledge. Ron Boyce was the Paul Bunyan of Utah law. He towered over the legal landscape. The Utah Supreme Court makes the final decisions, but Ron Boyce often was the final authority on what they meant. One time I heard a Utah Supreme Court Justice joke that he needed to talk with Ron to find out what the Justice had just decided. At the law school we have a faculty library with case reporters and law reviews. But the real faculty library was just a few doors away in the person of Ron Boyce.

A number of years ago, Ron asked me if I found it difficult to keep up with the state supreme court decisions. I assumed he meant the Utah Supreme Court, and I admitted that I didn't always read all of the decisions when they were issued. It turned out that Ron was referring to the supreme court decisions from every state! Then he told me his system for reading all of them from the regional reporter system on a fourteen day cycle.

A little over ten years ago, then Dean Lee Teitelbaum and I were standing in the law school lobby and we noticed Ron, clearly quite pleased about something, walking toward us with a stack of books that he had purchased at the law library's excess book sale. We asked him what he had bought. He proudly announced that he had secured a copy of the Norwegian Penal Code. He then proceeded to tell us about the interesting way Norway approaches criminal conspiracy law. As he walked away, Lee turned to me and said that he wished we had that conversation on tape. In a way we do; we'll never forget it.

A few years ago, I received in the mail a complimentary copy of a 700 page volume on the history of the Navy Judge Advocate General's Corps. The only person I could imagine actually reading it was Ron Boyce. I gave it to him, and the next day his mother died. At the funeral, Ron thanked me for the book and apologized that he had not yet had a chance to read it.

We all know that Ron Boyce performed essentially two full time jobs at the same time at exceptionally high levels. I had the unique opportunity to see him do this firsthand. I worked with Professor Boyce as a faculty colleague, and I worked with Judge Boyce when I served as United States Attorney. In December 1995, just a few days before Christmas, there was a bomb scare at the federal courthouse, and everyone had to evacuate. As I checked to make sure everyone was gone from the fourth floor, I ran into Judge Boyce. He reminded me that he was holding court at 1:00 p.m. I reminded him there was a bomb scare evacuation. He said he knew about the evacuation, but that he would be in the parking lot to hear cases on his calendar, and that the Assistant US Attorneys with cases had better be there. It was lunchtime, and I ran up and down Main Street trying to find our lawyers. Judge Boyce held court that freezing day in the parking lot, with lawyers and prisoners in orange jump suits shivering in the cold.

As much as he taught in classrooms, in courtrooms, and in auditoriums, he taught us even more through his example. And that, I suggest, may be his greatest legacy. You see, Ron Boyce loved Darlene and his family, he loved the court and the court family, he loved the law school and the law school family, and he loved his country. He loved these people and these institutions, and he was absolutely dedicated and loyal to them all. He worked

harder than anyone I've ever known. He was totally without pretense. He was an exceptionally honest and decent man. He was fair. And he was humble. His loss, as incalculable as it is, is exceeded by the wonderful legacy and example he leaves. Goodbye Judge, goodbye Professor, goodbye Ron. You were our teacher, and you were our friend. And you meant the world to all of us.

Professor John Flynn. We all know that Ron Boyce set high standards for himself as a lawyer, teacher and judge, and that he lived up to them in ways that will never be matched. Some of us also know how devoted to his country he was and the quiet pride he had in his service in the United States Air Force and Air Force Reserve despite the annual struggle he endured for several years to pass the physical required of a full colonel – a physical none of us could pass. Some of us even know that in 1943 at age ten and unbeknown to his parents, Ron tried to sign up in the military to help defend his country in World War II. I know Ron would not mind our holding a memorial on Veteran's Day, a day he held sacred because it is a day to commemorate the devotion of those who served their country in the military. If we were compelled to hold a memorial in his memory, he would want it on this day so long as we remember all those who served and presently serve in the military forces of our Country.

Barbara McFarlane, Marva Hicken and Kathleen Steck, his assistants at the College of Law and at the Court have long known what a wonderful and considerate man he was to work for despite his repeated attempts — sometimes subtle and other times not — to take over their offices to store some of his books. Barbara worked with Ron at the College of Law for 35 years. She always called Ron her "boss" even though he did not consider himself her "boss," certainly did not act like a "boss" and considered her a good and close friend. Every day he could be found in Barbara's office dictating an exam question, a speech, or a letter after his morning class or doing so by phone later in the day. He never mastered such modern devices as a dictaphone or a computer, so Barbara kept up her shorthand skills by taking dictation every day from the man she fondly called "The Mad Dictator." He did not mind being known as such or for not adopting the more modern trappings of electronic equipment because he knew Barbara was more accurate and understood how to punctuate his thoughts as he went along.

Barbara, Marva and Kathleen all mentioned that Ron was never unpleasant or demanding; that he always thanked them when they completed a project; that he left them alone and never looked over their shoulder; and, that if mistakes happened, he always found humor in the mistake. Ron treated everyone the same way and he would want the loyal help of these three remarkable friends remembered instead of praise for himself.

The College of Law has had Ron Boyce prowling its halls and library since 1954 when he first enrolled as a law student and sat in the classes of some remarkable law teachers like Wally Bennett, Edgar Bodenheimer; Ron Degnan, Dan Dykstra, Fred Emery, Sandy Kadish, Spence Kimball, Bob Swenson and Bob Schmidt. They were all managed by an equally remarkable staff person, Rita Fordham. Ron joined the faculty in 1966 when Sam Thurman was the Dean. Our growing faculty included new additions like Dick Aaron, Jerry Andersen, Ed Firmage, Jeff Fordham, Lionel Frankel, Denny Ingram, Bill Lockhart, John Morris, Les Mazor, Wayne Thode, Arvo Van Alystyne and Dick Young in those years. We were his other family, and Ron would want us remembered as such.

He would not only debate just about any topic one could come up with, he was often better informed about it than most. Frequently, one was not quite sure where Ron stood on a particular topic as he probed in true Socratic style to help another understand their own assumptions without imposing his views on his students or friends. This was particularly true of politics and I must confess after 36 years that I could never quite decide whether Ron was a right wing Republican, a moderate one, a Utah Democrat or an unrepentant Libertarian. I always suspected he was none of the above but could never be certain and knew it was useless to ask. It would only provoke another question about why I assumed he was one or the other just because he had made a funny comment about some current event.

Ron was famous, of course, for reading every case that was printed in the Reporter System – state and federal – and was able to cite them, what they stood for and even the page where the point of the case was made, at the drop of a hat. Bob Campbell, a fellow young lawyer with Ron in the early days of his career at the Attorney General's Office, told me about the time when Ron was making a particularly strange argument in a case before the Utah Supreme Court. Justice Callister leaned over and asked: " Counsel, do you have any support at all for the unusual proposition you are arguing?" Ron replied: "Yes, your honor it is from a case decided by the Supreme Court of South Africa at page so and so of the South African Reports. You might note it is from Spring Assizes of this year." And, the case did hold what Ron was arguing and it was indeed decided at the Spring Assizes of the South African court for that year.

One day when I almost tripped over the pile of reporters regularly stacked outside his office door, Ron opened the door to add another to the pile. I said: "Ron, you must be the only person in all creation that reads the Australian, Canadian, English and all

the U.S. reports." He held up the book he was about to add to the pile and said with a smile: "You missed New Zealand and I am almost finished with South Africa if you want to skim over some of the interesting cases in there."

Judge David Winder. I am honored to be able to speak to you concerning my friend of 43 years, Ronald Nelson Boyce. Ron Boyce was educated in Salt Lake City public schools, and graduated from East High School. As you might expect, he excelled academically. In some other respects, he didn't excel. He was rather short of stature and, in fact, some of the students referred to him as "Scrawny Ronnie." Understandably, this upset him, and he set out early to correct that impression. He took up weightlifting, bodybuilding, and wrestling. He continued some training in these areas while at law school. To help finance his schooling, he went to work for Bob Rice, who ran a chain of bodybuilding salons. By 1956, his training there enabled Ron to bench press 181 pounds, with a physique which would have made Charles Atlas proud.

He also was a top wrestler on the University of Utah wrestling team. But Ron never told me about his wrestling successes until some 25 years ago when I read a John Mooney column in the *Tribune* sports section. Mooney had an interview with Carl Schleckman, then the wrestling coach at the University of Utah, who gave his opinion of the best wrestlers in Utah history. There, among four or five names was Ronald N. Boyce. I had a validation of Ron's wrestling skills one day 30 or 35 years ago at a barbecue in my back yard. Ron Boyce was a guest, as was Richard L. Dewsnup, who was then Ron's and my partner at Clyde, Mecham and Pratt. After a few beers, Dewsnup, a big strong farm boy from Delta, Utah, got playfully pushing Ron around. Suddenly, Ron went into action and within about five seconds or less had Dewsnup pinned to the grass. I never had any doubt, after that, as to Ron's wrestling prowess.

After graduating from the University of Utah in 1955 Ron went into an accelerated program at the University Law School and graduated there in 1957 at or near the top of his class. In law school, Ron was Note Editor of the Law Review, and graduated Order of the Coif. He then became an officer in the Judge Advocate department of the Air Force where he handled numerous court marshals. He ultimately retired from the Air Force Reserve as a full colonel. About this time, Ron met Darlene at the Rice Fitness Salon. She was the love of his life. At the time of their meeting, Darlene was an instructor at one of Rice's salons. Prior to this meeting, Ron had been a judge in a beauty pageant in which Darlene was crowned "Ms. Wasatch." After only six dates, Ron and Darlene were married.

Ron Boyce drove a 1967 Mustang, which he bought new that year and always drove thereafter. I understand it is parked in front of the building. His desire for continuity was extended to his wardrobe. The last suit I saw him wearing before he went into the hospital had probably been bought in 1967, the same year as his revered Mustang. Ron was never a great fan of the banking system. I don't think he had a checking account until perhaps ten years ago, when he was almost forced to open an account so that he could pay his utility bills. Before this, I used to see him troop up to Mountain Fuel Supply and Utah Power & Light to the one cashier who would accept cash. No kidding, Ron would carry four or five thousand dollars in a very fat wallet, mainly in $100 dollar bills. I don't think he's ever had a credit card.

I am sure that most of you are generally familiar with Ron's background and legal accomplishments. These are admirably set forth in his obituary. I will not repeat them, but I do want to briefly mention some of his other achievements and interests. In the early '60s Ron worked for the Utah Attorney General's office, and argued more than one hundred appeals before the Utah Supreme Court and the Tenth Circuit – possibly more than anyone else. He continued that prolific output as a U.S. Magistrate Judge. When the auditors of the magistrate judge system checked the records relating to Judge Boyce, they were astounded. Judge Boyce, along with Judge Alba, are two of the most productive magistrate judges in the United States – among other things, writing, between them, some 300 Reports & Recommendations a year.

His non-legal reading was extensive. He bought over $20,000 of various books per year, and unlike a lot of people who buy books for the impression it will create, Ron Boyce read what he bought. The house attests to this. Most of it is covered floor to ceiling with stacks of books. When we have visited Ron and Darlene, we mainly sit in the back yard between Bobbie and Jack, their lovely Samoyed dogs, because there is insufficient room in the house.

Judge Boyce's death has created a great void at the U.S. Courthouse these days. I can't really explain how Ron has been able to touch everyone's lives at the court. Nevertheless, he has. Much of his appeal is that he has never sought approval or flattery, and the last thing he was interested in was winning a popularity contest. He was content to have his co-workers' respect, and he certainly has obtained that.

In conclusion, Judge Boyce has accomplished as much as any person I know. He has excelled as husband, Air Force officer, teacher, judge, and servant to the community and bar. He is truly unique. It is no exaggeration to say of Judge Boyce what Shakespeare's Hamlet said, describing his deceased father: "He was a man, take him for all in all, I shall not look upon his like again."

Notice of Proposed Admissions Rule Changes

In 1997, the Admissions Committee of the Bar was assigned to comprehensively overview all aspects of the admission process. Since December 1999, the Commission has held approximately six commission meetings in which various changes to the admissions process have been recommended or adopted. Some additional changes are anticipated to be approved by the Bar Commission at its December 6th meeting. The purpose of this article is to outline major changes in the Rules Governing Admission to the Utah State Bar and to solicit comments from members of the Bar before submitting the changes to the Utah Supreme Court. Comments may be emailed to rulecomments@utahbar.org or mailed to the Utah State Bar, attention Katherine Fox, General Counsel, Utah Law and Justice Center, 645 South 200 East, Salt Lake City, UT 84111-3834. Comments should be received by January 17, 2003.

The goal of the admissions process is to assure that: (1) each applicant has achieved a sufficient amount of scholarly education and graduated from an ABA approved law school; (2) each applicant possesses the requisite moral character and fitness to protect the public interest and engender the trust of clients, adversaries, courts and others; and (3) each applicant has the ability to identify legal issues, to engage in a reasoned analysis of those issues and to arrive at a logical solution by application of fundamental legal principles by examination which demonstrates the applicant's thorough understanding of these legal principles. The proposed amended Rules Governing Admission to the Utah State Bar are available at the Bar's website. Because of the substantial number of changes made, a redline version of the rules is not very beneficial but may be obtained upon request. The majority of the revisions of the Character and Fitness Rule have already been approved by the Supreme Court as have those amendments relating to the adoption of the Multistate Practice Test ("MPT").

The amended rules clarify, in a number of places that the applicant for admission bears the burden of proof by clear and convincing evidence. This standard, however, is not new and has been previously approved by the Utah Supreme Court. Amended Rule 1 has greatly expanded definitions to eliminate assumptions or ambiguities. Many of the definitions that were previously contained throughout the rules, have been consolidated under Rule 1. Rule 2 has been modified for purposes of clarification or consistency and a new Rule 2-6 clarifies that waivers may not be granted.

Rules 3 and 4 contain the qualifications for admission of student applicants, student attorney applicants, foreign law school applicants and attorney applicants. These rules clarify that all applicants must have graduated from a law school approved by the American Bar Association ("ABA") (or, with respect to foreign applicants, graduates from English common law jurisdictions may be admitted after completing a number of ABA approved law school courses). In the past, attorney applicants were not required to have attended an ABA approved law school.

Rule 5 codifies the standards for examination of those with disabilities under the Americans with Disabilities Act and provides for an appeal procedure. Rule 6 clarifies the application requirements and fees and deadlines relating to the Bar examination. The Rule provides for specific deadlines for former attorneys, limits the availability of refunds and limits the postponement or transfer of an application to a subsequent exam period.

Rule 7 is the rule on character and fitness, which rule has been, in great part, previously approved by the Supreme Court. Additional changes relate to attorneys seeking readmission to the Bar and specific requirements with respect to appeals. The "clear and convincing" standard mentioned above applies to applicants who are required to appear before the Character and Fitness Committee. Rule 8 is a new rule that provides notice of the appeal procedure available to an applicant who is denied admission because he does not meet admission requirements.

Rule 9 on the composition of the Bar exam has been approved by the Supreme Court and adopts the MPT as part of the written portion of the Bar examination. Rule 10 addresses preparation, grading and scoring of the bar examination and Rule 11 deals with MBE scores. These rules have been modified only for purposes of clarification or because of the Court's adoption of the MPT. Rule 12 discusses the currently existing requirement that an applicant must pass the Multistate Professional Responsibility Examination ("MPRE"). The Admissions Committee, however, has recommended that the required score on the MPRE be increased to 86 for applicants taking the bar examination commencing February 2005. Currently, the required score is 80.

Rule 13 with respect to unsuccessful applicants of the Bar examination has been reworded and modified to accommodate the MPT. Rule 14 outlines the Bar examination appeal procedure and provides minor modifications consistent with other changes.

Rules 15 and 16 provide the provisions with respect to the payment of license fees, enrollment fees, the attorney's oath and admission to the bar. Rule 17 on the licensing of foreign legal consultants remains unchanged. Finally, Rule 18 is a "new" rule comprised of provisions found elsewhere in the old rules relating to confidentiality. It also adds a new provision with respect to immunity.

Comments received are for use in the submission of the rules to the Supreme Court for approval. In addition, the Admissions Committee will consider all comments relating to all aspects of the admissions process. The Admissions Committee is continuing to examine other aspects of the admissions process.

Community Legal Center – Now Open

205 North 400 West • Salt Lake City, Utah 84103

Utah's major nonprofit providers of free civil legal assistance to low-income and disabled individuals and families, and the joint fundraising campaign, "and Justice for all," have co-located into the new Community Legal Center (CLC):

"and Justice for all"
phone: (801) 924-3182
fax: (801) 359-7359

Disability Law Center
phone: (801) 363-1347 or
(800) 662-9080
fax: (801) 363-1437

Legal Aid Society of Salt Lake
phone: (801) 328-8849
fax: (801) 359-7359

Multi-Cultural Legal Center
phone: (801) 486-1183
fax: (801) 596-7426

Senior Lawyer Volunteer Project
phone: (801) 328-8891 or
(800) 662-4245
fax: (801) 328-8898

Utah Legal Services
phone: (801) 328-8891 or
(800) 662-4245
fax: (801) 328-8898

The general CLC phone number is (801) 924-9000. Please call the appropriate agency directly to most efficiently expedite service.

2003 MID-YEAR CONVENTION

UTAH STATE BAR

MARCH 13–15, 2003

Dixie Center at St. George
1835 Convention Center Drive
St. George, Utah

✯ Brochure/Registration materials
will be available in the
January/February 2003 edition
of the *Utah Bar Journal* ✯

2003 MID-YEAR CONVENTION ACCOMMODATIONS

Room blocks at the following hotels have been reserved.
You must indicate you are with the Utah State Bar to receive the Bar rate.

Hotel	Rate (+10.35% tax)	Block Size	Release Date
Best Western Abbey Inn (435) 652-1234	$79	78-Q 28-K	2/16/03
Ambassador Inn (435) 673-8325	$61	60	2/13/03
Best Inn & Suites (435) 652-3030 (800) 718-0297	$54	38	2/13/03
Bluffs Inn & Suites (435) 628-6699 (800) 83-BLUFF	$79	35	2/13/03
Comfort Suites (435) 673-7000 (800) 245-8602	$65	80	2/13/03
Fairfield Inn (435) 673-6066	$59	70	2/13/03
Hampton Inn (435) 652-1200	$75	25	2/13/03
Holiday Inn (435) 628-4235	$79	50-90	2/17/03
Las Palmas Condos at Green Valley Resort (435) 628-8060 (800) 237-1068	$88–195/nightly	limited # 1-3 bdrm condos	2/13/03
St. George Resort & Spa (fka Hilton) (435) 628-0463	$69	50	2/13/03
Ramada Inn (800) 713-9435	$65	100	2/12/03

Commission Highlights

During its regularly scheduled meeting October 25, 2002, which was held in Salt Lake City, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. John Adams reported that the pending U.S. Supreme Court Petition for Writ of Certiorari in the 9th Circuit case of *Washington Legal Foundation v. Legal Foundation of Washington* has important implications for all IOLTA programs in the United States, including the one the Utah Bar Foundation currently administers. Thirty-nine bar associations throughout the country have joined on the Respondent's brief as *amicus curiae.* The Bar Commission's Executive Committee had previously authorized our participation on the brief.
2. Jim Gilson has been selected for the position on the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.
3. Gus Chin and David Brickey have been appointed to serve on the Justice Court Standards Committee.
4. The names of Daniel R. Cragun, Kristine M. Knowlton, Gregory J. Sanders, Christina Jepson Schmutz, Brad C. Smith and Trystan B. Smith have been submitted to Governor Leavitt for service on the 2nd District Trial Court Judicial Nominating Commission. The Governor will select two from this list.
5. John Adams reported that the Constitutional Law Class for Legislators was moving forward. Erik Luna, a law professor at the University of Utah S. J. Quinney College of Law, and Kevin Worthen, an Associate Dean at Brigham Young University J. Reuben Clark Law School have been chosen as presenters.
6. John Adams described the success of the Dialogue on Freedom program and thanked everyone for their support and participation. There were 1,435 discussions held in 137 public and private secondary schools in Utah. These discussions were presented by 413 lawyers, 70 legislators, 57 state and federal judges and 51 representatives from local, county and state government.
7. Roger Tschanz presented requests to the Commission, for the Client Security Fund which totaled $18,300. After discussion, this recommendation was approved.
8. Pat Jones, a market researcher with Dan Jones & Associates, summarized the Qualitative Research Analysis Report Relating to Focus Groups of Middle-Class Utah Residents dated September 2002. Ms. Jones drew several conclusions from her research relating to what the Bar can do to make the process of seeking legal assistance more accessible and streamlined. The average citizen strongly suggests that attorneys offer free initial consultations. They also want clarification on estimated costs for various legal services and for lawyers to take more time with them. More Bar sponsored public seminars on estate planning, wills and trusts, the probate process and financial planning need to be held. Lawyers need to advertise more and let people know what to expect when they need an attorney.
9. Steve Waterman and Judge James Z. Davis, Co-Chairs of the Admissions Committee distributed the redline and proposed "final" draft of the admissions rules. Mr. Waterman described the overall progress the Admissions Committee has made over the past few years (beginning in 1999) including major revisions to the application and significant improvements in the character and fitness process. The majority of the current proposed rule changes were presented to the Commission and subsequently approved in the fall of 2000 and summer of 2001. Other changes remain to be further discussed at December's meeting. In August of this year, the Supreme Court approved the addition of Multistate Performance Testing as a new component of the Bar examination.
10. Richard Uday Director of Lawyers Helping Lawyers (LHL) updated the Commission on developments relating to the LHL program. LHL typically tries to assist those lawyers with drug, alcohol and mental health issues affecting their lives and profession. Over the past year, out of 23 official referrals, all but three (3) matters were self-reported. Mr. Uday said that the ABA has scheduled an evaluation of the program between November and January (at a reduced fee) and that they would involve both Utah law schools. Roger Cutler, Chairman of LHL Committee, discussed with the Commission the crucial need for funding.
11. Bob Merrell reported that he, John Baldwin and Arnold Birrell had recently met with the Bar's auditors, Deloitte and Touche, and also the Bar's Finance Committee to discuss whether in light of questionable accounting practices with Enron, etc. should the Bar periodically change accounting firms. Merrell observed that the senior auditor from Deloitte and Touche rotated on a regular basis. Several Commissioners observed that perhaps it was time to begin replacing long-time committee members.
12. John Adams reported that "Judges School" was developed to dispense valuable information to our members about the application process for judicial openings. A presentation has been scheduled for April.
13. Clayton Simms of the Minority Bar Association, Vicky Fitlow of the Young Lawyers Division, Lauren Barros of Women Lawyers of Utah and Joyce Nunn of the Legal Assistants Division all gave reports to the Commission on projects and developments of their various divisions and associations.
14. Debra Moore reported on the recent Bar Leadership Workshop. She suggested that more planning needs to take place at an earlier stage, involving chairs and presidents of sections and committees sooner to help ensure that the workshop agenda is more member-driven rather than Commission-driven.
15. Debra Moore reported on the Bar's Long Range Plan. Debra stated that she would like to form a steering committee of eight to ten individuals from different sectors of the member-

ship to review certain aspects of the Bar's Long Range Plan.

16. Dane Nolan gave a report on the Judicial Council. He noted that due to the massive growth in the south end of the valley (West Jordan, Sandy City etc.), there is a great need of expanded court facilities and service.

17. Lowry Snow briefly summarized the background of the Utah Supreme Court's Advisory Committee on Professionalism that is chaired by Justice Durrant. He said that the different segments of the Committee's findings and recommendations would be reduced to one report and presented to the Supreme Court for its consideration.

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.

2003 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 2003 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, no later than Friday, April 25, 2003. The award categories include:

1. Judge of the Year
2. Lawyer of the Year
3. Young Lawyer of the Year
4. Section/Committee of the Year
5. Community Member of the Year

2003 Mid-Year Convention Awards

The Board of Bar Commissioners is seeking applications for two Bar awards to be given at the 2003 Mid-Year Convention. These awards honor publicly those whose professionalism, public service, and personal dedication have significantly enhanced the administration of justice, the delivery of legal services, and the improvement of the profession. Award applications must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111, no later than Friday, January 17, 2003.

1. **Dorathy Merrill Brothers Award –** For the Advancement of Women in the Legal Profession.

2. **Raymond S. Uno Award –** For the Advancement of Minorities in the Legal Profession.

Notice of Election of Bar Commissioners

Third and Fifth Divisions

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

Applicants must be nominated by a written petition of ten or more members of the Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after January 2 and **completed petitions must be received no later than March 1.** Ballots will be mailed on or about May 1, with balloting to be completed and ballots received by the Bar office by 5:00 pm on May 30. Ballots will be counted on June 2.

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

1) Space for up to a 200-word campaign message plus a photograph in the April issue of the *Utah Bar Journal.* The space may be used for biographical information, platform or other election promotion. Campaign messages for the April *Bar Journal* publication are due, along with completed petitions, two photographs, and a short biographical sketch **no later than March 3.**

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

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

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

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

Bar Sharks For Justice

On three consecutive Thursday evenings this past October the Young Lawyers Division hosted the First Annual Pool Tournament and fundraiser for "and Justice for all"– Bar Sharks For Justice – at the Dead Goat Saloon in downtown Salt Lake. Members of the legal community were invited to participate. Law firms, as well as the Young Lawyers Division, sponsored twelve two-person teams made up of associates, partners, paralegals, receptionists, runners, clerks, and students from both the University of Utah and Brigham Young University law schools, which competed for the first place traveling shark trophy and other prizes. A raffle was held for participants and spectators, and prizes were awarded to the biggest team cheering section present, on all three nights of the tournament. Salt Lake's Blue Iguana restaurant provided tasty eats, as well.

(L-R above) Attorney supporters of "and Justice for all" – Ron Yengich, Alan Sullivan, and Dick Burbidge – kindly lent their images to be depicted as "bar sharks" for the artwork featured on event posters and t-shirts. T-shirts are still available – call "and Justice for all" at (801) 924-3182.

On the first night, the twelve teams played a seeding round, each team playing two matches – consisting of three games of 8-ball. Points were awarded based upon the number of balls sunk, with 10 being the maximum score for each game. After dividing the teams into two pools, play continued the second night with pool play in Group A, and round robin play in Group B. The third night saw round robin play continue for Group B, with a consolation final for the top two teams. For Group A, the third night began with two qualifying matches into the semi-final round, then the semi-finals and finals.

In addition to the up to six players for each team (substitutions were allowed if the same two players were not able to play all three weeks in a row), a couple of local celebrities joined in the fun as well. ABC 4 News reporter Chris Vanocur teamed up with attorney and Dead Goat owner Daniel Darger the first night, and *Salt Lake Tribune* columnist Paul Rolly played on Darger's team the final night. The latter "celebrity team" beat the U of U team in the consolation game for Group B.

(L-R above) First place "and Justice for all" team members, Curt Lyman, Fraser Nelson, B. J. Makary, and Rob Denton with the shark trophy.

After a hard fought final round, the "and Justice for all" team captured first place and the coveted shark trophy (which was given to event host YLD's chair, Vicky Fitlow, to keep until next year's tournament). Players included Martin Seymour Blaustein, Solomon Chacon, Rob Denton, Curt Lyman, B. J. Makary, and Fraser Nelson. Manning Curtis Bradshaw & Bednar's team of Brian Applebaum, Tori Aumann, and Jim Ji won second place. Third place went to Snell & Wilmer's team of Scott Dubois and Mike Horner.

This "unique fundraiser" (according to Randall Carlisle on the Channel 4 News) raised $1,757 for the "and Justice for all" Campaign, which supports the Disability Law Center, Legal Aid Society of Salt Lake, Utah Legal Services, and other nonprofit providers of free civil legal assistance to Utah's poor, elderly, disabled, and ethnic minorities. Just as important as the funds raised was the fun had by all, and the friendly competition among the participating law firms, who enjoyed facing off on opposing sides of the (pool) table – for the worthy cause of access to justice for all.

"and Justice for all" and The Young Lawyers Division Thank the Generous Supporters of the First Annual *Bar Sharks For Justice Pool Tournament*

"EVENT" SPONSORS
Laherty & Lokken
Yengich Rich & Xaiz
Young Lawyers Division

"TEAM" SPONSORS
Anonymous
Buckland Orton Darger Hansen Waldo & Barton
Burbidge & Mitchell
Larsen & Gruber
Lear & Lear
Littlefield & Peterson
Manning Curtis Bradshaw & Bednar
Snell & Wilmer

IN-KIND SPONSORS
Blue Iguana
BWP Design
Dead Goat Saloon
The Litigation Document Group

PRIZE DONORS
Blue Boutique
Canyon Sports Ltd.
Christopher's Seafood & Steakhouse
Gastronomy, Inc.
M&M Distributing
The Melting Pot
Sit-n-Sleep
VINA Distributing

Special thanks to the Pool Tournament Committee: Wade Budge, Daniel Darger, Vicky Fitlow, Debbie Griffiths, and Candice Vogel

Notice of Direct Election of Bar President

In response to the task force on Bar governance the Utah Supreme Court has amended the Bar's election rules to permit all active Bar members in good standing to submit their names to the Bar Commission to be nomination to run for President-Elect in a popular election and to succeed to the office of President. The Bar Commission will interview all potential candidates and select two final candidates who will run on a ballot submitted to all active Bar members and voted upon by the active Bar membership. Final candidates may include sitting Bar Commissioners who have indicated interest.

Letters indicating an interest in being nominated to run are due at the Bar offices, 645 South 200 East, Salt Lake City, Utah, 84111 by 5:00 pm on March 3, 2003. Potential candidates will be invited to meet with the Bar Commission in the afternoon of March 13, 2003 at the commission meeting in St. George. At that time the Commission will select the finalist candidates for the election.

Ballots will be mailed May 1st and will be counted June 2nd. The President-Elect will be seated July 16, 2003 at the Bar's Annual Convention and will serve one year as president-elect prior to succeeding to president. The president and president-elect need not be sitting Bar Commissioners.

In order to reduce campaigning costs, the Bar will print a one page campaign statement from the final candidates in the *Utah Bar Journal* and will include a one page statement from the candidates with the election ballot mailing. For further information, call John C. Baldwin, Executive Director, 297-7028, or e-mail jbaldwin@utahbar.org.

Notice of Rebate

The Utah Bar Commission recently made a grant of $40,000 to the "and Justice for all" building campaign to assist the consortium of Utah Legal Services, Legal Aid of Salt Lake, and the Disability Law Center in purchasing the Pete Suazo Legal Center. The Commission believes that the contribution is an important step in assisting this project but that due to the many generous contributions to the project by the lawyers of the state, the grant should be made only if lawyers were provided with the opportunity for a *pro rata* rebate of their 2001-2002 licensing fees. Lawyers would receive rebates depending on their licensing status.

Accordingly, any lawyer who is interested in receiving his or her proportional rebate of this grant should contact Bar Executive Director John Baldwin at 645 South 200 East, Salt Lake City, Utah 84111 or e-mail at john.baldwin@utahbar.org.

AUTHORS WANTED

The Utah State Bar is interested in establishing a web page listing publications authored by Utah licensed attorneys.

For more information, contact:
CONNIE HOWARD at (801) 297-7033

SPOTLIGHT *on Professionalism*

In September, an assistant attorney general appeared at the Utah Court of Appeals for oral argument. Just as the court session was about to begin, he discovered that in the press of putting together audio-visual materials and equipment to be used in oral argument, he had left his suit jacket back at the office. Lest this advocate feel awkward about being obviously "underdressed" for an appellate argument, the opposing attorney, Ron Yengich, removed his jacket and set it aside. Both sides then proceeded to argue the case in shirt-and-tie.

Heard or seen something similar?

E-mail your anecdote to:
jorme@email.utcourts.gov

Thirteenth Annual

Lawyers & Court Personnel Food & Winter Clothing Drive

for the Less Fortunate

The holidays are a special time for giving and giving thanks.
Please share your good fortune with those who are less fortunate.

SELECTED SHELTERS:

The Rescue Mission
Women & Children in Jeopardy Program
Volunteers of America Utah Detox (non-profit alcohol & drug detox center)

WHAT IS NEEDED?

CASH!!! cash donations can be made payable to the shelter of your choice, or to the Utah State Bar. Even a $5 donation can buy a crate of oranges or apples.

new or used winter and other clothing: for men, women & children
boots, gloves, coats, pants, hats, scarves, suits, shirts, sweaters, sweats, shoes

housewares: bunkbeds, mattresses, cribs, blankets, sheets, books, children's videos, stuffed animals, toys

personal care kits: toothpaste, toothbrushes, combs, soap, shampoo, conditioner, lotion, tissue, barrettes, ponytail holders, towels, washcloths, etc.

all types of food: oranges, apples, grapefruit, baby food, formula, canned juices, canned meats, canned vegetables, crackers, rice, beans, pasta, peanut butter, powdered milk, tuna fish
(please note that all donated food must be commercially packaged and should be non-perishable.)

DROP DATE:

Friday, December 20, 2002 • 7:30 am to 6:00 pm
Utah Law & Justice Center rear dock – 645 South 200 East • Salt Lake City
Volunteers will meet you as you drive up.

If you are unable to drop your donations prior to 6:00 pm, please leave them on the dock near the building, as we will be checking again later in the evening and early Saturday morning.

Volunteers are needed at each firm to coordinate the distribution of e-mails and flyers to the firm and to coordinate the collection for the drop. If you are interested in helping please contact:
Leonard W. Burningham: (801) 363-7411 • Toby Brown: (801) 951-2470

Thank You!

Discipline Corner

RESIGNATION WITH DISCIPLINE PENDING

On November 1, 2002, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Granting Verified Petition for Consent to Resignation with Discipline Pending in the matter of Martin S. Tanner. In the Petition for Resignation with Discipline Pending, Mr. Tanner did not dispute the essential facts which provide a basis that he violated Rules 3.3(a) (Candor Toward the Tribunal), 3.4(b) (Fairness to Opposing Party and Counsel), and 8.4(a), (c) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary the essential facts are: Mr. Tanner was retained to represent a client in a divorce action in the course of which he prepared and knowingly submitted papers containing material misrepresentations to the Third Judicial District Court. The client suffered injury in the form of delays in the proceedings, as well as inconvenience in investigating what had transpired in her case.

In the November 1, 2002 Order, Chief Justice Durham has permitted Mr. Tanner to continue to participate in the case of *Glade Leon Parduhn v. Natalie Buchi, et al.,* Utah Supreme Court case No. 2001-0926-SC, through completion of the appellate process and to continue to participate in the case of *Julia Ann Galbraith, individually and as personal representative of the estate of Jeffrey Leo Galbraith, deceased v. Pacific Corp., formerly Utah Power & Light Company, an Oregon Corporation, et al.,* Third District Court, Civil No. 00-090-7121, through the anticipated mediation. Mr. Tanner is permitted to participate in an attorney capacity in both matters provided he discloses his status to his clients, opposing counsel and any co-counsel, and his clients consent after full disclosure regarding this Petition.

SUSPENSION

On October 3, 2002, the Honorable Pamela Heffernan, Second Judicial District Court, entered an Order of Discipline: Suspension, suspending Russell T. Doncouse from the practice of law for one year for violation of Rules 5.5 (Unauthorized Practice of Law), 8.1(a) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(d) (Misconduct). The suspension is effective beginning November 4, 2002.

On March 1, 2002, the Second Judicial District Court entered an Order suspending Mr. Doncouse for three months. During the period of suspension, Mr. Doncouse continued to practice law and filed a false affidavit of compliance.

Aggravating factors include: prior record of discipline, selfish motive, multiple cases, deceptive practices.

Mitigating factors include: sincere, although incomplete effort to try to comply with suspension by transferring cases, cooperation with the OPC, previously good character and reputation in the legal community.

The matter is the subject of an appeal to the Utah Supreme Court by the OPC.

ADMONITION

On October 10, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 5.1(c)(2) (Responsibilities of a Partner or Supervisory Lawyer) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
In the capacity of supervising attorney, the attorney was informed by a subordinate attorney that the subordinate attorney had redacted a medical report. The submission of the redacted medical report was an attempt to mislead, which did not in fact mislead. The supervising attorney allowed the matter to go without remediation for more than fifteen months and, as an alternate trial strategy, allowed the subordinate attorney to say less than the truth about who redacted the document. [The subordinate attorney received a disciplinary suspension].

ADMONITION

On October 17, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 3.3(a)(1) (Candor Toward the Tribunal), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney prepared affidavits for submission to a court that incorrectly stated that the affidavits were based upon the attorney's personal knowledge.

ADMONITION

On October 18, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 8.4(a) (Misconduct) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney used a partially sealed document in a professional conference. In another incident, the attorney impermissibly disclosed details of a case to an opposing party. In a third incident, the attorney failed to comply with public meeting notice requirements.

ADMONITION

On October 31, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 3.1 (Meritorious Claims and Contentions) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney represented a client charged with automobile assault and operating a motor vehicle resulting in a collision with a bicycle. The client was acquitted of the charges. Following the criminal trial, the attorney brought an action against the cyclist alleging the cyclist attempted to extort money from the client for damages to the bicycle. The attorney accused the cyclist of conspiring with the cyclist's neighbor who was in a separate legal dispute with the attorney's client. The attorney offered to refrain from filing the lawsuit against the cyclist if the cyclist would testify that the cyclist's neighbor initiated the fabricated story and if the cyclist would pay the client a sum of money. The cyclist filed an answer to the complaint in court and a motion to dismiss. The court dismissed the complaint.

ADMONITION

On October 31, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.5(b) (Fees), 1.15(b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client in a bankruptcy action for which the client paid the attorney a flat fee of $850. The attorney did not communicate in writing to the client the basis or rate of the fees to be charged. The attorney advised the client that the client may be ineligible for bankruptcy relief and advised the client to compromise two debts. The client provided the attorney with funds to pay the debts, but later decided to pay just one of them. The client requested on three occasions that the attorney refund the money for the second debt. When the client received the attorney's billing statement, the client discovered that the attorney had charged twenty-five percent of the amount paid to settle one of the debts. The attorney refunded a portion of the money intended to compromise the second debt.

Do You UPL?

Marilu Peterson, CLA-S – Legal Assistant Division Chair

Of course not you say. Not me, not ever. But are you sure? Let's see you work in a law firm or a corporate legal department. Your supervising attorney is close at hand. So, every thing you do and say is not UPL, right? Maybe, but maybe not.

Elsewhere in this issue, the Legal Assistant Division has arranged to reprint an article from a recent issue of *Legal Assistant Today* which poses some interesting questions. I found it thought-provoking and I hope you (and your supervising attorney) do, too.

In the meantime, a gentle reminder that the LAD drafted Canons of Ethics for its members which were adopted by the Bar Commission some years ago. They are reprinted below along with the Utilization Guidelines promulgated some years ago by the Office of Professional Conduct.

Canons of Ethics for Legal Assistants
As a general guide intended to aid legal assistants and attorneys, the Legal Assistant Division and the Board of Bar Commissioners has approved the following canons of ethics for legal assistants:

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

Canon 2 – A legal assistant shall not:

a) establish an attorney-client relationship;

b) establish the amount of a fee to be charged for legal services;

c) give legal opinions or advice;

d) represent a client before a court or agency unless so authorized by that court or agency;

e) engage in, encourage, or contribute to any act which would constitute the unauthorized practice of law; and

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

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

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

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

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

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

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

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

A. Legal assistants shall:

1. Disclose their status as legal assistants at the outset of any professional relationship with a client, other attorneys, as court or administrative agency or personnel thereof, or members of the general public;
2. Preserve the confidences and secrets of all clients;
3. Understand the Rules of Professional conduct, as amended, and these guidelines in order to avoid any action which would involve the attorney in violation of the Rules, or give the appearance of professional impropriety.

B. Legal assistants may perform services for an attorney in the

representation of a client, provided:

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

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

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

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

1. Conduct client interviews and maintain general contact with the client after the establishment of the attorney-client relationship, so long as the client is aware of the status and function of the legal assistant, and the client contact is under the supervision of an attorney;
2. Locate and interview witnesses, so long as the witnesses are aware of the status and function of the legal assistant;
3. Conduct investigations and statistical and documentary research for review bythe attorney;
4. Draft legal documents for review by the attorney;
5. Draft correspondence and pleadings for review by and signature of the attorney;
6. Summarize depositions, interrogatories and testimony for review by the attorney;
7. Attend executions of wills, real estate closings, depositions, court or administrative hearings and trials with the attorney;
8. Author and sign letters provided the legal assistant's status is clearly indicated and the correspondence does not contain independent legal opinions or legal advice; and
9. Conduct legal research for review by the attorney.

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

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

CLE Calendar

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
12/11/02	**ADR Academy Part III: 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
12/13/02	**Ethics: Lawyers Helping Lawyers.** 9:00 am – 12:00 pm. $75 Where does professionalism begin and end? How to insure you are amongst the respected legal professionals. Speakers: Hon. Gregory K. Orme, Richard G. Uday, ABA Attorney Assistance Representatives	3 ethics
12/18/02	**Technology for Attorneys.** 8:30 am – 5:00 pm. $175. $25 discount for on-line registration before December 13. Firm web pages, ethical issues in web page design, internet legal research, analysis of internet, on-line security issues, on-line documents, case management software, new courtroom technology, document assembly software, new technology options for law firms, internet ethics, wireless technology, ethics in internet advertising, ethical issues relating to software, improving the bottom line.	9.5 (includes 1.5 ethics)
12/18/02	**Last Chance CLE: Search and Seizure.** 11:00 am – 1:30 pm. $40 YLD, $60 others.	3 CLE/NLCLE
12/19/02	**Effective Appellate Advocacy: Litigating Beyond the Trial Court.** 9:00 am – noon. $25 YLD, $40 Lit. and App. section, $60 others. 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, the Utah Court of Appeals and the Utah Supreme Court find effective in briefing and oral argument.	3 CLE/NLCLE
01/08/03	**ADR Academy: Mock Mediation Part I.** 5:30 – 6:45 pm. $40 YLD, $50 ADR Section, $60 others. Watch a mediation unfold in a commercial dispute.	1.5 CLE/NLCLE
01/15/03	**Ethics School.** 9:30 am – 3:30 pm. $125 for pre-registration before January 8, $150 after.	6 ethics
01/17/03	**"And Ethics For All".** 9:30 am – 12:00 pm. $95 pre-registration, $105 at the door.	3 ethics

To register for any of these seminars: Call 297-7033, 297-7032 or 257-5515, OR Fax to 531-0660, OR email cle@utahbar.org, OR on-line at www.utahbar.org/cle. Include your name, bar number and seminar title.

REGISTRATION FORM

Pre-registration recommended for all seminars. Cancellations must be received in writing 48 hours prior to seminar for refund, unless otherwise indicated. Door registrations are accepted on a first come, first served basis.

Registration for (Seminar Title(s)):

(1) _____ (2) _____

(3) _____ (4) _____

Name: _____ Bar No.: _____

Phone No.: _____ Total $ _____

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

☐ AMEX Exp. Date _____

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.

FOR RENT

Honolulu – Oceanfront – Waikiki. Spectacularly gorgeous designers condo. 1BR + murphy bed, 2 BA. Available Dec 15 – Mar 30. Heated Pool. Literally over the water on the Gold Coast. 4 doors down from the Outrigger Canoe Club. No children. 808-384-7775 or 808-923-4343 or vicstr@gte.net.

POSITIONS AVAILABLE

ATTORNEY: AV rated Las Vegas law firm focusing on corporate law, business succession planning, estate planning, trust and estate administration, tax planning, asset protection and elder law seeks associate with litigation experience to assist with estate, corporate and commercial litigation matters. Excellent compensation package and benefits. Must have good academic credentials. Please fax resume to Firm Administrator at (702) 870-6090.

EXCEPTIONAL OPPORTUNITY – Respected, established and well-located downtown firm is seeking lateral hire with some established clients for long-term relationship. Firm is medium sized with well-controlled overhead. Any practice area will be considered. This could be a great opportunity for you. Please submit resume to Christine Critchley, Confidential Box #26, c/o Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

Opportunity to practice in South Utah County: Offices available immediately. Prime location, considerable furniture and equipment, has been law office for 52 years. Three private offices, conference room, reception room and workroom, off-street parking. Phone (801) 798-6920.

Attorney or Legal Advocate – Public interest law firm seeks attorney or legal advocate to investigate allegations of abuse and neglect of people with disabilities in nursing homes, group homes, hospitals, jails and prison. Investigation, negotiation, advocacy, and problem solving skills required. Experience preferred in disability, mental health, civil rights, or public interest law. Salary DOE, excellent benefits, exciting work, progressive work environment. Persons of color and persons with disabilities encouraged to apply. Submit resume and letter of application by November 22nd to Executive Director, Disability Law Center, 205 North 400 West Salt Lake City, Utah 84103. Fax 363-1437. Equal Opportunity Employer.

United States District Court for the District of Utah
Public Notice – Appointment of Magistrate Judge

The United States District Court for the District of Utah solicits applications for the position of fulltime United States magistrate judge in Salt Lake City subject to funding by the Congress in Fiscal Year 2003. The position's duties include conducting preliminary proceedings in criminal cases; authorizing search warrants; trying and disposing of certain misdemeanor cases, conducting jury trials where authorized by the Court and with the parties' consent; conducting scheduling, discovery, and settlement conferences; handling referred civil matters; and, in general, conducting a variety of pretrial matters as directed by the Court.

Application forms for the magistrate judge position may be dowloaded from the Court's website at www.utd.uscourts.gov or obtained from: Markus B. Zimmer, Clerk of Court, United States District Court, Suite 150, Frank E. Moss United States Courthouse, 350 South Main Street, Salt Lake City, Utah 84101.

Applications prepared and submitted as nominations by a party other than the applicant will not be considered. Completed application forms and supporting documentation must be received in the Office of the Clerk of Court no later than 5:00 pm, the close of business, on Wednesday, January 15, 2003. All applications submitted in advance of the deadline will be considered in confidence by members of the Merit Selection Panel and the Court. The panel's deliberations shall remain confidential.

OFFICE SPACE/SHARING

OFFICE SPACE: Heart of downtown, share with established firm. Includes two large, top floor, private offices, conf. rm., assistant stations, reception area, off street parking. Call Reggie @ Babcock, Scott & Babcock at 531-7000 or email Reggie@babcockscott.com. Must see.

Law firm in historical Salt Lake Stock and Mining building at 39 Exchange Place has two office spaces available, $500 to $850. Amenities include family law referrals from yellow page picture ad, receptionist, conference room, fax, copier, law library, parking, kitchen and optional DSL connection. Contact Joanne or Richard @ 534-0909.

Attorney Office Share/Ogden and Layton. Ogden and Layton law firm seeking attorneys to share office space and do overflow work in Business Law, Real Estate Law and Estate Planning, as well as some personal injury. All the nice amenities, wood desk, conference room, reception area, law library, secretarial and paralegal support, computer network, time and billing system, phones, etc. Durbano Law Firm, 476 W. Heritage Park Blvd., #200, Layton, Utah 84041. Phone: (801) 776-4111. Fax: (801) 776-1121.

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.

Deluxe office space for one or two attorneys. Avoid the downtown/freeway congestion. 7026 South 900 East. Includes two spacious offices, large reception area, file storage, wet bar, convenient parking adjacent to building. Call 272-1013.

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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.

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Certificate of Compliance

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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.