

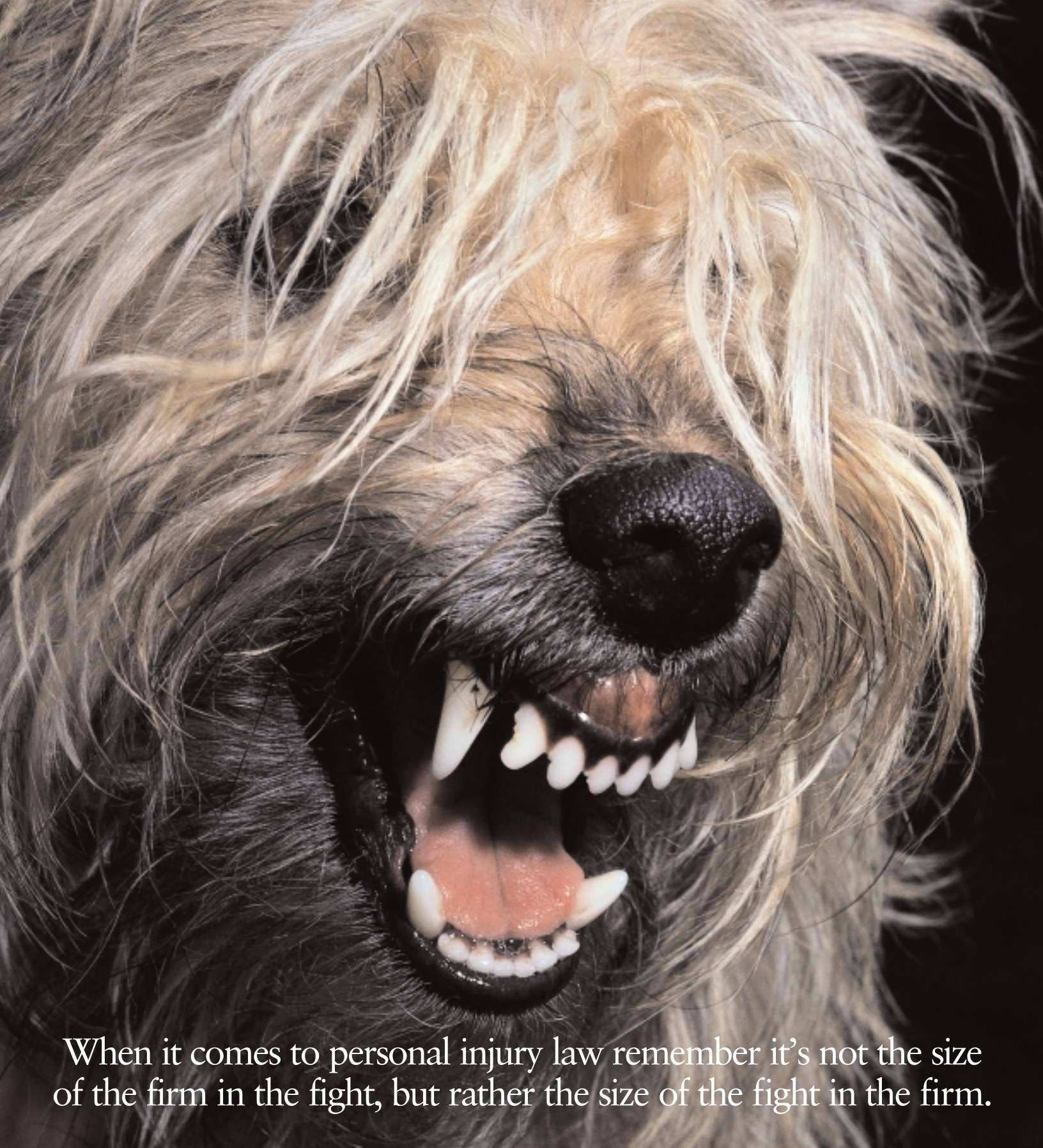
Utah Bar JOURNAL

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*Special issue featuring Pro Bono
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Table of Contents

Creating Access to Justice: Moving Toward Success A View From the Trenches by Waine Riches	7
Utah State Bar Pro Bono Program by Charles R.B. Stewart	14
Why & Where Utah Attorneys Volunteer & Provide Public Service by Mary Boudreau	16
Building a Tibetan Family's Home – Pro Bono and Quite by Accident by Dan Hindert	24
The Multi-Cultural Legal Center by Su Chon	26
The Salty Soup: Some Thoughts on Access to Civil Justice by Gary L. Johnson	28
Community Lawyering by David Dominguez	31
Needs of Elderly Committee Pro Bono Project by TantaLisa Clayton	36
State Bar News	38
Paralegal Division	46
CLE Calendar	47
Classified Ads	48

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COVER: For this special “Pro Bono” edition of the *Utah Bar Journal*, we have taken a different approach to our cover art. Rather than the usual landscape photo, the *Journal* committee decided that this photograph of the Statue of Liberty would best represent what Utah's Pro Bono projects are trying to accomplish.

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

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

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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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.
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Creating Access to Justice: Moving Toward Success A View From the Trenches

by *Waine Riches*

This may go down as the single most exciting year of my twenty years in practice, the year in which we all decided once and for all to seriously tackle the most glaring problem faced by our profession, the lack of access to Utah's legal system by the vast majority of low and middle income Utahns. I want to praise Professor Linda Smith and Bar President Debra Moore, as well as the the S.J. Quinney College of Law and the Utah State Bar for their efforts in this year's Fordham Debates calling for a state plan to achieve access to justice. I would also like to praise Chief Justice Durham who furthered the concept of a state planning process in her State of the Judiciary speech. And I would like to say a word of thanks to the Utah State Legislature who put a bur under everyone's saddle with the threat of implementing the amended unauthorized practice of law statute unless we attorneys showed some serious progress towards fixing the access to justice problem. Now that the notion of a state plan is out in the open, let's go after it with a vengeance. Let's look at all of the possibilities, pick the ones that seem the most likely to lead to success and get to work implementing them.

There is an old adage, I believe coined by Mark Twain: Success comes from experience and experience comes from failure. In the past twenty years I was fortunate in being allowed to create and/or supervise a number of projects and legal offices which resulted in the provision of legal assistance to thousands and tens of thousands of Utahns. I've also served on numerous boards of non-profits and have created, managed and been volunteer staff on various pro bono projects. These offices and projects ran the gamut from very successful to complete failures, and everywhere in between.

My most recent project is a clinic at the Matheson Courthouse which assists anyone caught in the Utah court system without an attorney. In 2003 I assisted around 5,000 people. If my early numbers for the current year hold I will assist 5000 to 8000 people

in 2004.

For this special edition of the *Bar Journal* I was asked to comment on both pro bono services and pro se litigants. Here are my thoughts. I start off with some items which I believe are the essentials to setting up a successful pro bono project. I end with some ideas for a user friendly pro se system.

PRO BONO PROJECT ESSENTIALS

1. For those of you interested in setting up pro bono projects, don't reinvent the wheel. There are successful non-profit and pro bono projects throughout United States, and here in Utah. Visit them, talk to the people running them, talk to the clients who have used them, talk to the commissioners, judges and court clerks affected by them. Find out what works and what doesn't.
2. Be stubborn in your determination to make your project a success. Very few successful people came by their success easily. To get where they are they wake up before the rest of us and put in twelve and sixteen hour days, six to seven days a week. It's no different in setting up a successful pro bono project. When I was Chairman of the Board for the Multicultural Legal Center most of the emails I received from our Director, Sherrie Hayashi, showed mailing times after midnight. Sherrie was a single mother, with a small child, working full time as an attorney, and managed to successfully fill her role as Director of MLC, raising \$150,000 the first year the project was funded and attending to all of the

WAINE RICHES is the Director, staff and Jack of all Trades for Waine's Clinic (Help for Pro Se Litigants).



other duties it takes to be a successful Director. To do this, she had to find time at points in her day when most of the rest of us were relaxing or sleeping. Because of her efforts, we hired staff, opened an office and provided direct services to clients. It was her determination which made the project a success.

3. Treat your project as a perpetual work in progress. Don't think that you can create a rigid plan at the beginning of a project that will be either the formula for success or something that you will be able to stick with beyond the first five minutes of implementation. You can't. The plan is not what is important. The success of the project is. The system you create cannot be blindly adhered to. All successful projects are dynamic and fluid. Your role as project director or staff is to do your best to figure out what is most likely to work, then try it out, and watch carefully to see what happens. Always be willing to tweak even the best of systems. And don't be afraid to scrap something entirely when it no longer is necessary or workable.

4. Create a time routine and stick to it at all costs. The quickest way to kill an excellent project is to not be available when you say you will be. If you want to have everyone know that you are up and running and can provide pro bono services, you've got to be

available at set days and times. I've seen successful projects which only offered services once a month and even once a quarter. But they had a routine time or a system of setting appointments which everyone could count on. My clinic has set hours, Mondays, Tuesdays and Thursdays. I've missed very few days in the entire five years of the project. Everyone knows the clinic hours. They know that if they come during those hours or make a referral I will be there.

5. To have a successful pro bono project, you need the assistance and cooperation of others. For example, there are a number of non-profit and pro-bono projects located in courthouses throughout the state, including my own. These projects depend upon the good will, cooperation and support of court security, clerks, judges, and administrators. I am very appreciative of everyone in the Administrative Office of the Courts and Matheson Courthouse for contributing to the success of my project.

In addition, Charles Stewart and the wonderful people at the Bar have been a tremendous help to my projects over the years. Most recently, I have relied on Charles to locate pro bono attorneys to represent those persons who I identify as not having the ability to negotiate the court system on their own because of low mental capabilities or lack of education.

And if I may be so bold, the Bar could take some very simple steps to encourage greater pro bono participation and help ongoing projects. All pro bono attorneys could use some kind of a break on the costs of CLE and Bar dues. I literally had so little income last year (\$4,500) that these two fees were extremely difficult to pay. The Bar could also provide free internet research tools to those of us engaged in pro bono activity.

If private law firms throughout the state would also help with similar things it would be dearly welcomed support to any pro bono project. For example, a law firm could adopt a project and pay the bar dues of the pro bono attorney, cover the project's malpractice insurance, or cover the costs of CLE. The law firm might add just one additional Utah Code to those they purchase each year and donate it to the project, or perhaps allow a pro bono attorney access to the firm's on line research resources from the attorney's office or home. I was fortunate this last year in having a student of mine talk the law firm she was working at into donating their year old Utah Codes rather than disposing of them. And when my Domestic Relations Manual came up missing, Utah Legal Services was gracious enough to provide me with two new ones.

Nominations for the Peter W. Billings, Sr. Outstanding Dispute Resolution Service Award

The Alternative Dispute Resolution Section of the Utah State Bar annually awards the Peter W. Billings, Sr. Award to the person or organization that has done the most to promote alternative dispute resolution. The award is not restricted to an attorney or judge. Please submit nominations by May 28, 2004 to:

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Utah Legal Services also maintains my project on their malpractice insurance. In my experience, these things help far more than anyone in a law firm doing a pro bono divorce.

In addition, every project needs some kind of financing. In the future, this funding will probably come from The And Justice For All Campaign. This campaign is unique throughout the United States and has received much deserved praise both inside and outside of Utah. The campaign still has a few glitches to work out though. Up to this point AJFA has not created a method to provide smaller non-profits with adequate funding. These smaller agencies fill critical gaps left by the three largest non-profits and in some instances do case work which the larger non-profits are prohibited from doing. In 2003 the AJFA building campaign successfully reached out to funding sources which have traditionally been the financial support for Utah's smaller programs. Most of these smaller programs are now desperately short of resources. If they are to return to the level of services provided before the 2003 building campaign, and if we are to expand services with other new energetic projects, there will of necessity have to be a way to adequately fund these programs and projects.

6. One of the things I remember from my undergraduate psy-

chology courses is that what motivates any one person is not necessarily what motivates the next. There is nothing that is universally rewarding to all of us. There are two things in our society which come close though, money and success. Since by definition, pro bono means helping people and not receiving any money, that leaves success as the most likely universal motivator for the volunteers involved in your project. If you are going to retain your volunteer attorney staff, they absolutely must see that what they are doing counts, that it achieves results. Interestingly enough, if you are to have clients use your project, you must also do the same thing for them.

Most practicing attorneys are working long days and long weeks. Asking them to commit time to a pro bono project will either take them away from their duties as an attorney, or more likely, will impact upon the very scarce time they have to spend with their families (not to mention the time which they absolutely must have to relax and engage in recreational, sport and other escape activity critical to maintaining their sanity). When we ask them to do pro bono work, we ask them to give up a lot. For this reason you will find that attorneys are not willing to do something that they see as a waste of their time. On the other hand, I have found

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Pro Bono at ULS

by Nick Angelides

My experiences in providing pro bono assistance at Utah Legal Services here in Salt Lake City this past year have been most gratifying and interesting.

Generally, I help out a few hours a week in the Senior Lawyer Volunteer Project providing legal services to low income people, mostly seniors, and in the Possession Bond Project by providing representation to low income tenants facing eviction actions at possession bond hearings.

The nature of my work is very interesting. At the SLVP, it is varied but mostly involves estate planning assistance including, e.g., making presentations at senior centers, preparing wills, powers of attorney, living wills, special needs trusts and dealing with problems regarding Medicaid/Medicare and the preservation of assets. Under the laws of this state, there isn't too much that can be done for those in danger of eviction. Representation here includes exploring possible defenses, insuring procedural safeguards are satisfied, negotiating resolution of disputes and/or minimizing the amount of tenant possession bonds where tenants wish to remain in the property, as well as providing the tenant time to find alternate housing where a move is required.

I find spending time at ULS gratifying in many respects. It is a pleasure working with its extremely competent, dedicated and congenial staff in providing needed services that otherwise would be completely out of reach to clients. Although a lot can be said for compensation in the form of fees, there is also a great value in the satisfaction I and the folks in this organization get back in the form of smiling faces and sincere expressions of gratitude. Most of all, I (rather selfishly) enjoy the good feeling I get in giving something back and in doing something just to be helpful.

Nicholas J. Angelides, "Nick," is retired both from the Air Force, where he served as a JAG officer, and from service as an Assistant Attorney General with the State of Utah. In between, he served as Bar Counsel for a short time, in private practice and as a civilian attorney in the JAG office at Hill Air Force Base. He volunteers Wednesday and Thursday mornings at SLVP, and Wednesday afternoons he handles Possession Bond cases.



that most attorneys will take the proverbial case "all the way to the US Supreme Court" if the cause is compelling enough.

Without a doubt, the most successful pro bono projects produce noticeable results. Clearly at the top of the heap in Utah is our small claims system. It's easily accessible for the parties. The volunteer attorney can leave having seen concrete tangible things happen and feeling that he or she contributed in a small way to the furtherance of justice. The parties get to tell their stories to a judge which many times is far more important to them than winning or losing. And the parties will always leave with an order in hand.

My clinic has also been rewarding for many of the same reasons. Time and time again the people I assist complete the court process and move on with their lives, better off than before they came into the clinic. There is even a silver lining for everyone when a person is a pro se litigant (although I'm sure that given the hassle created by pro se litigants for attorneys, clerks and judges, anything positive coming out of someone representing themselves would be hard to see.) That silver lining is this: The self represented litigant must of necessity take full and personal responsibility for solving his or her own problems. Other than what help I'm able to provide, they don't have an attorney to resolve their problems for them. This process results in visible growth. I see over and over significant and positive changes in many of the clients. They start out angry and afraid. They finish a whole lot wiser, and interestingly, more self assured.

7. Successful pro bono projects of the future will need to go outside of traditional concepts, not only of service delivery systems, but of what is legitimate pro bono work. In 2001 I was sent as Utah's representative to attend a special conference set up by the federal Legal Services Corporation to begin looking into different ways of providing services that actually resolve the problems faced by low income persons. With ample evidence that traditional litigation models are too expensive and not effective, the Corporation hand picked attorneys, directors, clients and experts from across the United States, including those who were strong supporters of the litigation model, to meet for a week and discuss methods that would actually result in problems faced by the poor being resolved.

To say the least, the experience was the most eye opening of my Legal Services' career. When placed on the same footing as those of us with advanced degrees and management experience, the

clients were remarkable. Their input was clear, concise and to the point. They were not being given responsibility for the resolution of their own problems. They didn't need us to resolve the problems for them, something that we were very ineffective at doing anyway. They needed us to provide guidance and help them with the parts which they lacked the skills to do, so that by and large, they would be the ones resolving their own problems.

8. When it comes to achieving long lasting results that actually make a difference in the life of the client and society as a whole, the best projects may not be legally related at all. In my years of working with low income populations it is clear that the unsolvable legal problems these folks find themselves in are not their real problems. If we want to reduce the number of court litigants and other people facing hardships because of poverty and crime we should be out at the prisons and jails teaching people how to read and write or creating programs which insure that every child in Utah has at least one adult in their life who cares about them and is an excellent role model. A pro bono attorney could accomplish a lot more in the Big Brother or Big Sister program than litigating yet another domestic law case.

USER FRIENDLY PRO SE SYSTEMS

1. The current law holds pro se litigants in the District Courts to the same standard as attorneys. Worse yet from the pro se litigant's view point, no matter how much a District Court judge might want to help, judges are prohibited from giving either advice or asking questions critical to the resolution of the case because doing so violates the judge's neutrality. This stems from the constitutional

role of the courts as the third branch of our checks and balances system of government. As such, the cases which are brought before the courts are political and adversarial. This system of governance is nothing short of genius. It, along with other constitutionally guaranteed rights, such as a strong and free press, will go a long way towards protecting the freedoms we hold sacred. We must in return protect the system at all costs.

However, not all cases in the court are political. And pro se litigants are not capable of living up to the standard set for attorneys. Nor is that standard necessary to the fair resolution of their case. We have other models of problem resolution systems that are far more user friendly, much less expensive to implement, recognize the abilities of both attorneys and non-attorneys alike, are fair, and leave the door to the courthouse open where it is necessary.

As a Legal Services attorney I practiced extensively in both state and federal administrative law forums. In 1996 Utah Legal Services had its budget cut by a third. In trying to figure out which services to discontinue, we looked for those systems which our clients had the most likelihood of negotiating on their own and that were perceived as fair by both our staff and our clients.

One of the areas we decided to cut was unemployment compensation hearings. Like arbitration proceedings, unemployment compensation judges are experts in the law which they apply. The hearings are full blown evidentiary hearings, with direct, cross and closing. The process is designed for the parties to appear either with or without a representative. When represented by counsel, the judge allows the attorney to proceed as normal with



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one important exception, if the attorney fails to cover a critical area the judge does it by asking questions. When a party is not represented, the judge asks all of the necessary questions to be able to understand the facts and appropriately resolve the issue.

Creating similar systems is far more affordable than continuing to expand the judicial system using Article III judges. These systems could still be housed in the courts and administered by the Administrative Office of the Courts so that no new agencies or layers of bureaucracy would need to be created. And like traditional agency hearings, the door to the District Courthouse could still be left open. In fact, Small Claims works this way right now and does so very successfully, with the significant exception that the judges are not necessarily experts in the area of law they are judging. We have the models to create much more user friendly systems. It's time we moved in that direction.

2. There are legal issues which are better resolved outside of the courts. The legislature and courts recognize this in the creation of mandatory mediation. The domestic law practitioners have recognized this through their endorsement and participation in both mediation and collaborative law. And the people forced into the court system as their only means of meeting legal requirements for divorce or other legal problems recognize this each and every day they have to try to draft documents, file papers, obtain hearing dates, and otherwise negotiate a system set up for lawyers with confusing and difficult rules and procedures. There are much more efficient, economical and less harmful ways than forcing them through an adversarial system and into the courts. And we do not

have to start from zero and completely reinvent the wheel. There are systems already in use elsewhere that should be studied.

For example, at one time Japan had the highest divorce rate in the industrialized world. They presently have a divorce rate half that of the United States (and Utah) using a three tier system which is almost completely outside of the court process. In the first tier, if a divorcing couple can work out the settlement on their own they are allowed to simply register their divorce at their local Ward office (the equivalent of a county office here) and walk out divorced. For those couples who have issues which they need assistance in resolving, they are required to go through a unique mediation process where the first thing which is done is an attempt to save the marriage. If the marriage can't be saved, then the mediator assists in resolving the issues. Only as a last resort after the failure of marriage counseling and mediation, will a couple be allowed to file in court. Only a miniscule number of divorces are ever filed in court in Japan.

In developing a similar system here we could use interactive computer programs to educate the parties as to all of the issues they need to address and to produce the agreement for them to sign. The agreement could be filed in the local courthouse or online so that no new storage and retrieval systems would need to be created in other government offices.

We are not far from such a process under the current system as it is now. Any couple who can agree as to all of their issues can use the State's Online Court Assistance Program and obtain a divorce without ever seeing a judge. And mediation is mandatory in those jurisdictions with the largest populations. The difference is that presently Utahns must navigate through our court system with all of the costs in time, money and emotion that this entails.

3. I have had people come into my clinic after 40 years of being separated who in all that time were unable to obtain the legal help they needed for a divorce. This lack of access to our legal systems can be far reaching and devastating. Utahns can be denied Social Security Retirement Benefits, encounter problems with estates when their subsequent "spouse" dies, be denied medical insurance coverage at critical times, and on and on. We have an opportunity to put systems in place which are user friendly, allow access with or without attorneys, do not have the drawbacks of our current adversarial system, and as a result are much more fair and just. Let's solve the problems faced by Utahns in accessing our legal system. Let's not let this opportunity pass.

Charles Gruber,

*formerly of the Utah State Bar's
Office of Professional Conduct,
is available to represent and consult with individuals
and law firms in matters related to malpractice and
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Utah State Bar Pro Bono Program

by Charles R.B. Stewart

The Utah State Bar Pro Bono Program was created in 1996 pursuant to the recommendation of the Bar's Delivery of Legal Services Committee. The program conducts a number of projects to enhance pro bono work within the state of Utah. The Pro Bono Program also coordinates with other organizations to further their pro bono goals.

One of the primary focuses of the Utah State Bar Program is of course the recruiting of volunteer attorneys. In the last five years we have met with real success in this area, tripling the number of volunteer attorneys to more than 1,000. These attorneys are located in almost every county in the state and represent over twenty-five different practice areas.

One of the challenges faced by the Bar has been to organize this resource into a useful form. To that end we have created a searchable database of these attorneys with additional information such as foreign languages spoken and willingness to work with law school students.

The Bar receives requests for direct representation from many different sources including judges, crime victims advocates, Adult Protective Services, Lawyers Helping Lawyers, the Disability Law Center, Legal Aid, and the Multicultural Legal Center. The Pro Bono Program works very closely with Utah Legal Services to try and serve those clients that do not meet the eligibility criteria mandated by their Federal funding. In 2003 the Bar placed over 160 cases for litigation from these varied sources.

The Tuesday Night Bar is a program that has been in place for over fifteen years. Staffed by pro bono attorneys recruited by and from the Young Lawyers Section of the Bar, roughly 1,200 people a year receive free legal advice every Tuesday night at the Law and Justice Center. This program is not means tested and is open to any one who makes an appointment.

Working with law firms to establish in-house pro bono projects is another goal of the Pro Bono Project. Recently the law firm Dorsey & Whitney, a transactionally oriented business law firm expressed an interest in taking a more active role in pro bono. Unfortunately given the firm's practice area, its attorneys had had

little opportunity to do pro bono work. In response, the Pro Bono program arranged for Sandy Dollowitz to conduct training at Dorsey & Whitney's office on Qualified Domestic Relations Orders, a common transactional divorce issue that Legal Aid lacks the resources to handle. The firm now stands ready to handle the cases for Legal Aid.

The J. Reuben Clark Law School at BYU is currently working with the Bar's Pro Bono Program to establish a student pro bono project that will create volunteer opportunities for the law students. By bringing together BYU Law School students, Bar representatives, judges, faculty and the Utah County offices of Utah Legal Services, this partnership will assist both the local community as well as the students. The S.J. Quinney College of Law's Pro Bono Initiative is a well-established law school student organization that the Bar has supported and worked with for the last three years. Together, these two programs demonstrate the benefit that comes from a collaborative approach to pro bono.

Over the last several years, the Pro Bono Program has undertaken a number of special projects to address unique challenges as they arose. In the aftermath of the Salt Lake City tornado in 2000, attorneys were recruited and referred out to assist homeowners that had legal issues as a result of damage caused by the storm. In 2001, as a result of the large scale mobilization of troops in Utah for the military action in Afghanistan, the Pro Bono Program recruited over 300 attorneys specifically to assist these men and women with the myriad of legal issues arising from activation. This effort was so well received and appreciated by the JAG that the program has been made permanent, and there is now an annual military pro bono award given by the Utah JAG in recognition of a pro bono attorney who has done exceptional work.

CHARLES R.B. STEWART is the Pro Bono Director for the Utah State Bar.



on behalf of service men and women.

Recruiting and organizing volunteer attorneys to participate in Bar sponsored educational efforts is another area of emphasis for the Pro Bono Program. In 2002, in recognition of the first anniversary of the events of September 11th, the Bar's Pro Bono Program recruited and scheduled the speaking of over 400 attorneys, making roughly 1,200 presentations, to approximately 30,000 students throughout the state of Utah. In 2003, the Program

organized a similar program to mark the 200th anniversary of *Marbury vs. Madison*. In 2004, the program is working on another educational effort, *Brown vs. Board of Education*, to mark the significance of this landmark decision on our public educational system.

Whether it is recruiting, promoting, coordinating, or organizing, the Utah State Bar's Pro Bono Program will do what it can to enhance the remarkable efforts of Utah's volunteer attorneys.

Pro Bono Profile: Todd Richardson

by Fred Anderson



Utah Legal Services, a non-profit agency providing essential legal services to those who are living in poverty, is fortunate to have pro bono attorneys and law students who willingly share their expertise and a portion of their time to address the legal needs of the less fortunate. Todd

Richardson, an inactive member of the Utah State Bar, is a very special volunteer. He is married and has five children, and formerly practiced law. Todd began volunteering in February 2003. He was familiar with Utah's legal forms, statutes, and processes, so he was a natural fit. He speaks fluent Spanish and we needed an interpreter to help in clinics in Tooele, Farmington, and Salt Lake City. Todd has made the pro se clinics effective for both English and Spanish speaking attendees with a variety of basic legal problems and has helped to translate clinic materials into Spanish.

The Rest of the Story

Todd graduated from Seattle University College of Law in 1984, passed the Utah State Bar exam, and went to work with a law firm in Salt Lake City doing liability claims. Eventually, he opened his own practice and was very successful. One warm spring day in 1998, while sitting on his motorcycle, stopped at a red light, a car doing about 40 mph, piloted by a drunk driver, plowed into him from behind. Todd was knocked 30 feet through the intersection and sustained life threatening

injuries. He was in a coma for six weeks and the prognosis was bleak.

Although slow, his recovery was nothing short of miraculous. It took almost five years before he could resume a somewhat normal life, but some of his injuries were insurmountable and would remain with him permanently. One of these permanent disabilities is a loss of short-term memory as a result of a brain injury that his helmet could not prevent. Todd is continually challenged with remembering ongoing and recent events. This makes it very difficult for him to learn "new" things and, tragically, impossible to practice law as he once had.

Faced with the reality of his circumstances, Todd could easily choose to stay at home to avoid the physical and social discomforts he experiences and which continually reinforce his limitations whenever he attempts to reintegrate himself as a functional member in society. But, he has not chosen the path of least resistance. Rather, Todd has chosen to apply the valuable knowledge, skills, and abilities that he still retains to help others who cannot help themselves. To date, he has donated approximately 360 hours of his time serving the economically disadvantaged who require basic legal services. Todd's desire to help others, his willingness to give of himself, and his demonstrated hard work with Utah Legal Services, in spite of his own challenges, make him not only a very special volunteer, but also a very outstanding person.

Why & Where Utah Attorneys Volunteer & Provide Public Service

by Mary Boudreau

Whether nationally or in Utah, attorneys generously serve the indigent in many settings, by adding pro bono work to their regular law practices or by committing their entire careers to that service. Opportunities to serve are practically unlimited, so long as you have the generosity to volunteer for even short periods of time. Lack of specialized legal experience is almost never a bar to pro bono work. In one state, a corporation's in-house legal department initiated a public immigration law clinic, supporting it both financially and with volunteers from its own staff, tutored in the law they needed to learn. A large civil law firm on the East Coast committed extensive attorney time to death row representation of a Texas inmate.

Utah's volunteer and public interest attorneys offer you a peripheral service even as you read this article. Those attorneys are working at a wide variety of legal clinics and organizations, which are listed below by geographic location and by organization. You may appreciate having this ready reference for sources of free or low-cost legal help throughout Utah, a list which can also be found on the state courts' website, at www.utcourts.gov/howto/legalassist/.

But don't stop at garnering such minimal benefit from their efforts! Those same generous folks are willing to mentor you into public service, providing invaluable training and support. Volunteer information can be obtained from the people whose phone numbers are listed following each site description below.

Encourage your interest in pro bono work by considering these comments from a few experienced volunteers:

Waine Riches has worked for over five years to establish and operate a free clinic for self-represented litigants in the Matheson Courthouse, where he volunteers over 30 hours weekly. He estimates that this year he will help about 8,000 clients "who have no other source of assistance." He says: "Waine's Clinic is the most grueling, exciting, and just plain fun project I've ever put together. Pro se clients, by definition, must take complete

personal responsibility for resolving their own problems. That struggle causes them to grow and change. This is the first time in 20 years of public law service that I see my efforts resulting in significant, positive changes in people's lives. I chose law as a career to make a difference. With this project, I feel I'm finally doing that." YES, Waine would appreciate help from more volunteers, including those willing to serve on reduced fee panels or to provide unbundled representation through limited court appearances. Waine's volunteer needs are detailed below, following the description of his clinic hours.

Nelda Bishop is a retired attorney who oversees the weekly domestic law clinic in Farmington, as well as volunteering at protective order hearings. Asked about her motivation for pro bono work, Nelda described a distressing protective order case from the previous day, laughed, and said she sometimes asks herself the same question with an introspective emphasis: "Why DO I do this?" The answer that keeps her going, though, is that she wants to help people who are in trouble, and knows that occasionally her assistance helps them get off to a good start. She also remembers attorney Jim Holbrook's past comment that he could not afford to hire himself, and she knows there are people in desperate need of legal help who simply cannot afford it.

Natalie Segall, who volunteers with Park City's Tuesday Night Bar says: "I do pro bono work because there is a real need for it in Summit County, where many people with legal questions and needs have no access to legal assistance. I've been doing this for three years, off and on, and sometimes feel like 'Ms. Pro Bono.' But I

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am fortunate to have the education and knowledge that I have, and feel I should 'give back' some of it to those who don't have the same advantages."

Gary McKean has supervised the Mountain View Legal Clinic in Layton for several years. Motivated by spiritual conviction, his pro bono work allows him to "live out" the Biblical injunction to "love mercy, do justice, and walk humbly with our Lord." (From Micah 6:8, which is the guiding scripture for the clinic's co-sponsor, the Christian Legal Society.) He believes that "all people need legal help at times, and we ought to give it to them whether they can pay for it or not. We cannot always help clients resolve their problems, but we can always listen and show that we care. Sometimes that's all they need, and we must be there to do at least that much."

Jay Kessler has volunteered for more than three years at the weekly legal clinic at Salt Lake City's St. Vincent DePaul soup kitchen; last fall, he was presented with Catholic Community Services' annual community service award. Jay says that his selfish

reason for volunteering is that "it makes me feel great; I am happy to help others. Sometimes I walk out of the St. Vincent's Center drained from all the horror stories I have heard, but providing this service also rejuvenates me." His dedication is undergirded by a scripture associated with his deep personal faith: "I would that ye should impart of your substance to the poor, every man according to that which he hath, . . . administering to their relief, both spiritually and temporally, according to their wants." (Mosiah 4:26) Jay also notes with gratitude that his wife's wholehearted support allows him to make his exceptional service commitment.

The law firm of Snow Jensen & Reece has sponsored a free monthly legal clinic in St George since 1996, with the firm's attorneys rotating volunteer service for people in Southern Utah who cannot afford attorney services. Lowry Snow says that the firm began the clinic as "a way to give something of value back to the community. We recognized that a real need for this kind of basic assistance was not being met."

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Our long-time colleague, Jerry D. Fenn,
 has left the firm to become Qwest President – Utah.

Free or Low-Cost Sources of Legal Assistance in Utah

FREE LEGAL CLINICS

Brigham City

Legal Info Night: Held the second and fourth Tuesday of each month, from 6:30 to 8:00 pm, at the YCU (Your Community in Unity) in Brigham City, located at 435 East 700 South. No appointments are necessary, no time limits apply, and the first who come will be served first. *Interested attorney volunteers should contact Cindy Lorrigan, the YCU's program director, at 435-723-5600.*

Utah Legal Services' Pro Se Clinic: Held the second Thursday of each month, from 1:00 to 4:00 pm, at 43 North Main. First come, first served. Call 435-734-4600 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Cedar City

Utah Legal Services' Pro Se Clinic: Held from 1:00 pm until 4:00 pm on the fourth Wednesday of the month, at the Fifth District Courthouse, 40 North 100 East. Call 435-867-3250 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Farmington

Domestic law clinic: Held Mondays, from 11:00 am to 1:00 pm, in the Second District Courthouse, 800 West State Street. Family law matters only. Call 801-447-3800 to check for scheduling changes. *Interested attorney volunteers should call Nelda Bishop at 801-792-7889.*

Utah Legal Services' Pro Se Clinic: Held from 1:00 to 4:00 pm on the first and third Wednesdays of the month, in the Second District Courthouse, 800 West State Street. Call 801-447-3800 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Layton

Mountain View Legal Clinic, co-sponsored by Christian Legal Society: Held the first and third Monday of each month, beginning at 6:00 pm, at Mt. View Baptist Church in Layton (Highway 193 at 2585 East 3000 North). For an appointment, call 801-771-3204. No religious affiliation is necessary. *Attorney volunteers are welcome, so long as they agree with principles/statement of belief of Christian Legal Society. For information, contact the above number for the church office.*

Logan

Utah Legal Services' Pro Se Clinic: Held every Thursday from 8:30 to 10:30 am, at the First District Courthouse, 135 North 100 West. Call 435-750-1300 to schedule an appointment before attending. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Moab

Seek Haven Legal Clinic, sponsored by Utah Legal Services: Held in Moab the first Monday of every month, from 7:00 – 8:30 pm, at 81 North 300 East. First come, first served. Contact 435-259-2229 for more information.

Ogden

Utah Legal Services Pro Se Clinic: Held from 1:00 to 3:00 pm on the second and fourth Wednesdays of each month, at the Second District Courthouse, 2525 Grant Avenue. Call 801-394-1173 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Weber County Bar Night: Held the second and fourth Tuesday of every month at Your Community Connection (YCC), located at 2261 Adams in Ogden. Call 801-394-9456 at least one week in advance for an appointment. Starts at 5:30 pm. *Interested attorney volunteers should call Sharon Mercer, YCC Volunteer Member Specialist.*

Park City

Tuesday Night Bar: Held the first Tuesday of every month, from 6:00 to 8:00 pm, at Miner's Hospital, 1345 Park Avenue, in Park City. First come, first served. *Interested attorney volunteers should call Natalie Segall at 435-655-3626.*

Small Claims Court Mediation: Held twice monthly, during small claims court at Silver Summit Justice Center, 6300 Silver Creek Drive. Free mediation services offered through trained volunteer mediators. For details, call Natalie Segall at 435-655-3626, or Lisa Dator at 435-640-7062

Price

Utah Legal Services Pro Se Clinic: Starting on 4/26/04, this clinic will be held from 10:00 am until 1:00 pm on the fourth Monday of each month, at the Seventh District Courthouse, 149 East 100 South. Call 435-636-3400 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Provo

Community Mediation Center: This non-profit center offers mediation service for all types of conflict, including divorce, employment, business, consumer, and debt. No one is denied service because of inability to pay, and fees are on a sliding scale. Mediation is a process in which a neutral third party facilitates communication between parties who are in dispute. Services are available in person and through conciliation on the telephone. Training is offered in mediation and classes for families. The Center also provides negotiation, communication, or mediation training to businesses. For mediation service, call 801-863-7919 or 801-422-3842, or contact the Center at www.communitymediationcenter.org. For volunteer information, please contact the Center through the phone numbers listed above.

Small Claims Court Mediation, available during small claims court in Utah County. Free mediation offered through trained volunteer mediators, in collaboration with BYU's J. Reuben Clark Law School. For information, call J. Reuben Clark Law School, at 801-422-2159.

Richfield

Utah Legal Services Pro Se Clinic: Held on the fourth Thursday of every month, from 10 am until 1:00 pm, in the Sixth District Courthouse, 895 East 300 North. Call 435-896-2700 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Roosevelt

Utah Legal Services Pro Se Clinic: Held from 9:00 am until noon on the second Wednesday of the month, at the Roosevelt Senior Center, 50 E. 200 South. Call 435-722-4296 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

St. George

Talk to a Lawyer: Conducted from 6:00 to 8:00 pm on the third Wednesday of every month by the law firm of Snow Jensen & Reece, this program offers free 15-minute consultations. Located at Washington County Library at 50 South Main Street. Call for an appointment at 435-628-3688. Interested attorney volunteers in the area who would like to participate should contact the firm at the above number.

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Utah Legal Services' Pro Se Clinic: Held from 8:30 until 11:30 am on the fourth Wednesday of the month, at the Fifth District Courthouse, 40 North 100 East. Call 435-985-5700 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Salt Lake City

Legal Aid Society's "Family Law Clinic for Self-Represented Litigants": Held weekdays from 8:00 am until 5:00 pm, in Room W15 of the Matheson Courthouse, at 450 South State Street. Staffed by a paralegal experienced in domestic law, who provides legal forms and assists in their completion. No legal advice is given. Call 801-238-7440 for information. *Interested attorney volunteers should contact Stewart Ralphs at 328-8849, ext. 3114.*

Waine's Clinic: A free program designed to assist self-represented (pro se) litigants, particularly with divorce and custody cases. The clinic, directed by a volunteer attorney, is held on Mondays from about 11:00 am until about 5:00 pm, and on Tuesdays and Thursdays from about 11:00 am until about 8:00 pm. Waine's Clinic is located in the Matheson Courthouse, at 450 South State Street. Call 801-238-7804 for additional information, and to confirm dates and times. No appointments. *Interested attorneys should contact Waine Riches by e-mail, at wainesclic.msn.com. Waine would particularly like to hear from (1) clinic volunteers with experience in general practice, immigration law, and criminal defense, and/or with foreign language skills, and (2) volunteers willing to become part of a panel of pro bono and/or reduced fee attorneys who (i) have foreign language skills; (ii) are willing to represent those who cannot represent themselves, for reasons such as illiteracy, low education, or mental disabilities, (iii) are willing to attend hearings with pro se litigants using the unbundled services model – clients will already have the necessary paperwork; or (iv) will undertake full representation at a reduced fee.*

Street Law: A project initiated by Utah Legal Services and assisted by volunteer law students from the University of Utah's law school. These programs assist with a variety of issues, ranging from filling out small claims and wage forms to legal consultation on many subjects. The programs include:

- Guadalupe School: 340 South 1040 West (Goshen Street). Meets Tuesday 5:00 pm to 7:00 pm. Note: A Spanish-speaking interpreter is almost always available.
- St. Vincent's: Located at 437 West 200 South. Meets Thursdays from noon until 2:30 pm. *Interested attorney volunteers should call Jay Kessler, at 252-1400.*
- Fourth Street Viaduct location: Held outdoors under the Fourth Street Viaduct, at 500 South and 600 – 700 West. Meets Sundays from 8:30 to 10:30 am. Note: These dates and times are subject to change.

Utah Legal Services' Pro Se Clinic: Held at Community Legal Center, 205 North 400 West, on the first and third Thursdays of every month, from 9:00 am until noon. Spanish-speaking clinic. By appointment only, which may be scheduled by calling Todd at 259-1471 between 9:00 am and 5:00 pm on weekdays. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, at 800-662-4245.*

Utah Center for the Deaf, legal clinic sponsored by Utah Legal Services. Held every third Wednesday, by appointment only. Call Annette Stewart at 263-4892 to schedule an appointment. Interpreters are provided. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Utah State Bar's "Tuesday Night Bar": Most Tuesdays from 5:00 to 6:30 pm, the Utah State Bar, through its Young Lawyers Division, offers personal consultations with volunteer attorneys. Appointments may be scheduled by calling 801-257-5516 on Monday afternoons between 1:00 and 5:00 pm, eight days prior to the appointment. *Interested attorney volunteers should contact either Jami at 538-1032 or Diane at 531-9075.*

Needs of Elderly Committee, monthly legal clinics: Held at 19 different senior centers and senior housing units in Salt Lake County, for two hours over lunchtime. Must be at least 60 years old to qualify for assistance. Call Elona at 257-5516 on Monday, Wednesday, or Friday afternoons for information about locations and times. Alternatively, call the senior center closest to you for information. *Interested attorney volunteers should contact either Elona at 257-5516, or Mary Jane at 272-3511. Minimum required commitment is 8 hours/year; resources and mentoring provided, and CLE training may be available.*

Salt Lake County

Landlord-Tenant Mediation Program: Provides mediation services to landlords and tenants involved in eviction proceedings in the Salt Lake County area, through trained volunteer mediators. This program represents collaboration between the Community Action Program and the Utah State Courts. For more information, contact Josie Turner at 359-2444, ext. 225.

Small Claims Court Mediation: Available during small claims court in Salt Lake County. Free mediation offered through trained volunteer mediators, in collaboration with Utah Dispute Resolution. For information, call Utah Dispute Resolution at 801-532-4841.

Tooele

Utah Legal Services Pro Se Clinic: Held every Monday, except the fourth Monday, at the Tooele Courthouse from 10:00 am until noon. Call 435-843-3210 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Tooele Senior Clinic, sponsored by Utah Legal Services Pro Se Clinic: Only for senior citizens, and only by appointment. Held at Tooele Senior Center, from 9:00 to 10:00 am on the first and third Mondays of every month. Call 435-882-2870 to schedule an appointment. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

Vernal

Utah Legal Services Pro Se Clinic: Held from 9:00 am until noon OR 1:00 to 4:00 pm, on the second Tuesday of the month, at the Eighth District Courthouse, 920 East Highway 40. Call 435-781-9300 to check for scheduling changes. *Interested attorney volunteers should contact Fred W. Anderson, Utah Legal Services, by calling 800-662-4245.*

AGENCIES AND ORGANIZATIONS: STATEWIDE & LOCAL SOURCES OF DIRECT LEGAL REPRESENTATION OR FREE LEGAL ADVICE AND REFERRAL

American Civil Liberties Union:

This nonprofit legal advocacy organization only litigates cases that affect the civil rights or liberties of large numbers of people. The ACLU does not provide direct representation to individuals, unless there is potential to set precedent for civil liberties issues. For more information about the ACLU or to fill out a civil rights complaint form, please visit their web page at www.acluutah.org, or call 801-521-9862.

Disability Law Center:

This private, non-profit organization protects and advocates for the rights of individuals with disabilities. Free services are provided statewide to individuals and families facing disability-related problems, especially in the areas of access and rights, abuse and neglect, education, community services, assistive technology, institutional care, and employment. Services include information on disability law and individual rights, investigation and monitoring in residential facilities; mediation and negotiation; representation in administrative hearings and court proceedings; and self-advocacy support and training. Call 800-662-550-4182, 800-550-4182 (TTY), or 801-363-1347 for assistance. Assistance may also be requested through the website www.disabilitylawcenter.org, or by visiting the Community Legal Center, 205 North 400 West in Salt Lake City.

Immigration Law:

Holy Cross Ministries Immigration Legal Services: Legal assistance in immigration cases is provided, regardless of religious affiliation, to eligible applicants, on a sliding scale fee basis. For more information, call 908-0293, ext. 38 or ext. 22.

Catholic Community Services, Immigration Program: Legal assistance with immigration matters is provided, regardless of income or religious affiliation. Flat fees are charged, which vary by case type and complexity. Fees may be waived for exceptional financial hardship. For more information, call 801-977-9119 between 8:30 am and 5:00 pm, Monday through Friday. *Interested attorney volunteers should contact Scott Benson at 428-1255.*

International Rescue Society: A certified immigration specialist offers low cost assistance with basic immigration services, including adjustments of status, petitions for family reunification, and applications for naturalization, travel documents, and employment authorization. For more information, call 801-328-1091 from 9:00 am to 5:00 pm, Monday through Friday. *Interested attorney volunteers should contact Tatjana Micic at the above number.*

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Legal Aid Society:

This private, non-profit organization provides legal representation, regardless of income, to victims of domestic violence or stalking who need a protective order or a civil stalking injunction. For low-income individuals whom it has assisted in domestic violence cases, it also provides representation in family law matters such as divorce, paternity, and custody. In addition, limited representation is provided for low-income, incapacitated persons against whom the Office of Public Guardian has filed a guardianship petition. Assistance is provided only for cases in Salt Lake County, for courts in downtown Salt Lake City, West Valley City, and Sandy. For more information, call 801-328-8849. Domestic violence and civil stalking victims are provided service on a walk-in basis at the Matheson Courthouse, Room W17, 450 South State Street, Salt Lake City (telephone 801-238-7170).

Multicultural Legal Center:

Currently, this organization provides immigration relief in cases in which domestic violence is involved. Call 801-486-1183 for information.

Small Claims Court Mediation Programs:

Provides mediation services to disputants in small claims cases, prior to court. These programs are available in Salt Lake County, Provo (Utah County), and Park City (Summit County). For more information, contact the numbers given under program descriptions listed above, under the headings for Park City, Provo, and Salt Lake County.

Utah Dispute Resolution:

With the help of volunteer mediators, this non-profit organization provides mediation services free or at low cost to people and organizations in the community. No one is denied service because of inability to pay. Some areas of mediation service include divorce, parenting time and plans, landlord and tenant, workplace, and consumer and merchant issues. Bilingual mediators are available in several languages. Mediation is a problem-solving process used to resolve disputes between two or more parties, with the help of an impartial and neutral third party (the mediator). Call 801-532-4841 for information, or visit UDR offices at The Law and Justice Center, 645 South 200 East, in Salt Lake City. *Interested volunteers should contact Pam Nelson at the above number.*

Utah Legal Services:

This organization handles civil cases for Utahns with low incomes, and for migrant farm workers and Native Americans. Areas of assistance include family law, housing, public assistance, senior citizen issues, and health benefits. Services include answering questions, providing legal advice, assisting with the preparation of legal documents, and representing clients in court. For more information, call the intake line at 1-800-662-4245 or, if dialing from within the Salt Lake City area, call 328-8891. Intake is available in Spanish, as well as English. Normal intake hours are 9:00 am to 2:00 pm, Monday through Friday. Offices are located in Salt Lake, Ogden, Provo, and Cedar City. *Interested attorney volunteers should contact Utah Legal Services at one of the numbers listed above.*

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Building a Tibetan Family's Home – Pro Bono and Quite by Accident

by Dan Hindert

Typically, we get to choose our *pro bono* projects. Other times, *pro bono* projects have a way of finding us (like that call from federal court assigning a prisoner's case). At Parsons Behle & Latimer, we recently helped a Tibetan family by doing an unusual *pro bono* project that didn't come about in either of these ways. Here's what happened.

The project evolved from an auto accident...a very sad one. Larry Stevens and I were asked to meet the victim at LDS Hospital. She was a Tibetan woman who had been injured in a one-car rollover and would never walk again. Before the accident, she and her husband each worked two jobs to provide for their seven children. Now, she couldn't work at all and her husband needed to drop one of his two jobs to care for his wife. It was impressive to us how much courage the family showed in facing this adversity.

Paradoxically, personal tragedies like this can be the plaintiff attorney's bread and butter. Not so here, because coverages and collectibility were so small when compared with the damages. Third-party auto liability coverage was only \$50,000. There was no chance of getting personal assets from the driver. There were no UIM coverages. There was no health insurance. And, unfortunately, this was the only member of the family with no safety net of Medicaid or Social Security benefits.

As attorneys, we felt fairly helpless, maybe useless. We dealt with that by adopting Plan A: (1) agree to work for this client for the maximum reasonable fee, (2) apply all injury proceeds to neutralize the family's medical debt to the extent possible, (3) guide them into bankruptcy as a last resort, and (4) somewhere down the road, give our fee back to the family after steering them through this minefield of new debt.

One of our first tasks was the thankless one of negotiating medical liens. We proposed a work-out where each provider took a pro rata distribution (18 cents on the dollar) from the very limited injury fund. Most agreed and some didn't. We paid in full those

who didn't. Then we approached the largest single lienholder LDS Hospital (IHC) to consider what to do next.

In a memorable telephone call with one of IHC's financial officers (our lienholder "adversary"), we thought it prudent to disclose the law firm's plan to give its fee back to the family. Big pause from the other end of the phone, then: "You're lawyers...so why would you do that?" IHC's officer then answered his own question by suggesting maybe IHC could do likewise. Together, we and IHC launched Plan B. We approached the remaining lienholders and asked them to place their pro rata recoveries in a joint fund that would help the family. With a little persistence, pretty soon all of the family's medical debt was extinguished, and we still had a fund of nearly \$48,000 from the total injury proceeds of \$53,000.

The best part came next...and the credit goes elsewhere. We were called by the Director of a local non-profit organization called Community Development Corporation (CDC). He explained that a Tibetan family had applied for home-ownership assistance, that CDC wanted to help, but that the family fell short of its minimum qualification requirements. He said the family had listed our law firm as a reference, and asked what was that about.

At this point, we had to take into account IHC and others in the medical community who had agreed to forgive payment of medical expenses to do something useful for the family. With IHC's permission, we told CDC they could have the entire fund if they could "commit" to get the family into a house of their own. Our tax attorney pointed out that in making any 501(c)(3) donation to

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CDC, we could not “instruct” them what to do with the money. Perhaps out of character for lawyers, we basically decided to put our faith in CDC. This was the beginning of Plan C.

In a leap of faith of its own, CDC partnered with University of Utah's School of Architecture to let its students design and build a home for the family. Land was acquired from Salt Lake City Corporation. Local contractors volunteered time and materials. Squatters Brew Pub provided hundreds of volunteer hours for landscaping. By Spring of 2003 the family moved in to a new (wheelchair accessible) home of their own.

This was a *pro bono* project that cut across professional fields, involving many people who in the ordinary course might not ever work together. Nearly 100 individuals and businesses ended up participating in the project. On behalf of Parsons Behle & Latimer, Larry Stevens and I wish to thank our primary “partners” on the project who were IHC, CDC, Salt Lake City Corporation, the University of Utah's School of Architecture and Squatters Brew Pub. Also, it was paralegal Ann Jessen who handled most of the hard details of negotiating liens and administering funds.

Pro Bono Profile: Jencie Anderson

by Linda F. Smith



Jencie Anderson entered the U of U law school in 1990 hoping to develop a career that made a difference to people and to the law that affected them. She has done so, many times over, through her pro bono efforts.

During her second year Jencie enrolled in the Civil Clinic Shelter & Support Program¹ in which U law students worked with Utah Legal Service lawyers providing outreach and legal service to the homeless. Each week supervised students interviewed people at soup kitchens and shelters, giving some referrals and advice, but accepting others for full representation. She soon became an expert at interviewing and advising clients with mental illness, since so many of them had been denied Social Security Disability benefits. All the students and lawyers wondered – how in the world did this clearly mentally ill person get denied? The students enjoyed winning these hearings before ALJs, but Jencie persisted in seeking the problem in the system.

Jencie analyzed dozens of individual cases in which benefits had been denied but then granted after hearing. Together she and Senior Attorney Mike Bulson identified a number of systemic problems with the way the state agency evaluated cases. Then they filed a class action lawsuit. This case was ultimately settled in favor of the poor clients and they received hundreds of thousands of dollars of back-benefits.²

After graduation, Jencie entered private practice. But she

continued to go to her homeless outreach site each week,³ giving poor individuals free advice, particularly about criminal and disability matters. Jencie next accepted a position at the ACLU and served as its lawyer for two and a half years; She then re-entered private practice, accepting court-appointed criminal defense cases and social security disability clients.

Most recently Jencie has joined the faculty at the S.J. Quinney College of Law where she teaches legal writing, oversees the criminal clinic, and supervises current students who work at Utah Legal Services. However, she has continued her pro bono work in still more vibrant and complex ways. In addition to serving on the board of Cornerstone Counseling Center and KRCL Community Radio, Jencie is a founding board member and current board president of the Rocky Mountain Innocence Center.⁴ This private non-profit agency represents individuals with provable claims of innocence in Utah, Wyoming and Nevada and Jencie is directly involved with all its cases. Jencie's unflagging eagerness to represent those otherwise without a voice is unparalleled.

1. The program was funded as a clinical program by the Legal Services Corporation, Inc. but all funds were paid by the U of U to Utah Legal Services. LSC no longer funds any clinical programs for law students.

2. This case, *Goodnight v. Chater*, was ultimately handled by pro bono volunteer lawyer Brent Manning because ULS was required to withdraw as counsel when Congress prohibited a federally funded program from bringing class actions. Today there is no program in Utah able to handle such a class action for the poor when a systemic problem is discovered.

3. Jencie is still doing outreach to the homeless – now on a twice-a-month basis – establishing perhaps the most long-standing student-pro bono project.

4. RMIC was founded by the late Professor Lionel Frankel in 1999.

The Multi-Cultural Legal Center

by Su Chon

EDITOR'S NOTE: *There are so many laudable pro bono legal services groups in Utah. The Journal wishes it could profile them all. Here is only one fine example. If we could profile each one, we would end each with the subheading "Pro Bono Opportunities."*

The Multi-Cultural Legal Center ("MLC") is a unique and innovative 501(c)(3) nonprofit organization whose mission is to use and strengthen Utah's system of justice to ensure that racial and ethnic communities receive equal treatment and access to legal representation.

Background

MLC was formed in 1997 by the Honorable Michael Kwan, Henri Sisneros, Sherrie Hayashi and Jimi Mitsunaga for the purposes of providing greater access and understanding to the legal system for racial and ethnic communities. MLC is accomplishing this mission by providing legal expertise and advocacy in areas of law which significantly impact racial and ethnic communities such as discrimination, immigration, and hate crimes, and by collaborating with existing legal service providers and other service agencies to make their services more accessible to communities of color. These communities face cultural and language barriers in understanding their rights, the law, and how to access the courts and legal representation.

Services, Cases & Clients

MLC's clients come from a widely diverse community: immigrants from Turkey, Argentina, Tonga, Ecuador, Columbia, Peru, Mexico, India, Russia, Somalia, Kenya, Mali, Canada, Nicaragua, Brazil, Costa Rica, Italy, Netherlands, Romania, Bolivia, Taiwan, Hong Kong, Japan, Trinidad, Cuba, Sudan, Bosnia; and long-standing Utah communities of African-Americans, Hispanic/Latino, Asian and Pacific Islander. In the recent 2000 U.S. census, Utah's communities of color have grown dramatically, far exceeding the general population growth. Utah's Hispanic/Latino population has grown 138% over 1990. The Pacific Islander population grew 97% and the Asian population grew 56%. Utah's African American

population has grown 46 percent from 1990 census figures. The Native American population has shown a 17% increase. The overall Utah population growth has increased 29.6% since 1990. For the first time Utah's minority community exceeds 10% of the general population. As these communities grow, so does the need for the services provided by our organization.

In its short history, MLC has provided legal representation in areas such as housing and employment discrimination, wage claims, and the Violence Against Women Act ("VAWA") Immigration Relief Project. The clients must meet income guidelines in order to qualify for services. In our VAWA Immigration Relief Project, we have helped many women who are married to U.S. citizens or lawful permanent residents who are victims of domestic violence. MLC advises these women on the law and petitions for residency on their behalf. "Angela"¹ and her children suffered from extreme physical and emotional abuse from her husband. Her husband would sharpen his kitchen knives and then test them for sharpness across Angela's skin. While she was pregnant with one of their children, he would kick her in the belly. He would beat the children in public and at home if they wanted to go to church or attend activities that he did not want them to attend. Without MLC's assistance, Angela would have stayed in the abusive relationship. MLC petitioned for residency on her behalf, and she obtained a work permit, found a job, moved into a safe home for her and her children, and is on her way to becoming a self-sufficient individual.

In addition to legal representation, MLC has organized and conducted seminars for racial and ethnic communities on such topics, such as "Ask a Lawyer," "Landlord/Tenant Relief," "Dealing with Law Enforcement," "Housing and Employment Discrimina-

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tion,” “Immigration Relief for Victims of Domestic Violence,” “Understanding the Legal System,” and “I-9 Provisions and Discrimination.” Legal education is equally important because these communities do not always understand the law, the language or the judicial system. By providing this information, these communities are empowered to follow the law and protect their rights. By incorporating legal advocacy and legal education, MLC takes a multi-cultural approach to these issues and focuses on educating these communities about the law, their rights and responsibilities, as well as promoting better cultural understanding of all communities.

Pro Bono Opportunities

We understand that the need for legal information encompasses criminal law, bankruptcy, credit issues, predatory mortgage lending, estate planning, domestic law, and business law. The Utah Offices of Ethnic Affairs has indicated that the needs of these communities are great. As the communities grow, these needs will continue to expand.

As a result of the recent state of the economy, MLC has been forced to reduce the range of legal services it provides, and its current

funding provides for the VAWA Immigration Relief Project and a limited wage claim project. MLC relies on the services of pro bono attorneys in a broad range of areas, including but not limited to, assistance with the wage claim project, participation in community legal education seminars, and advising potential clients regarding a broad spectrum of legal issues. Because of these needs, MLC needs attorneys who are willing to donate some time to participate in legal clinics, to provide information in a seminar to educate the communities, to supervise a specific legal clinic, to supervise legal projects on issues that impact these communities, or to provide legal representation to persons who contact our offices. It is not necessary for you to speak another language, so long as you are able to help. All attorneys, legal assistants, and other volunteers are welcome to help MLC in meeting these many needs.

1. Angela is a composite of several clients who have sought MLC's assistance.



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The Salty Soup: Some Thoughts on Access to Civil Justice

by Gary L. Johnson

*Who let the greedy in
And who left the needy out
Who made this salty soup'*

For a number of years I had the privilege of serving on the Leadership Committee of And Justice For All. While I am not sure my fellow committee members were all that sorry to see me move on to new challenges, I will miss my participation in this endeavor because it is an unrecognized, but integral, component of our profession and of the society in which we live.

At the end of 1998, the Disability Law Center, Legal Aid Society and Utah Legal Services launched the And Justice For All Campaign, a fund raising effort aimed at members of the Utah State Bar. And Justice For All ("AJFA") is now an organization which strives to increase access to civil legal services for those less-fortunate members in our society. AJFA does this primarily by raising money which is funneled to the individual agencies to allow them to provide a broader base of services to their specific client groups. AJFA is a non-profit organization overseen by a separate Board of Trustees. Thousands of additional eligible people have received help from these agencies because of AJFA.

For a number of years I pestered a number of you in the Bar to donate money (asking for the equivalent of two billable hours), to AJFA. Many of you at first did not believe this program was any of your concern, but a number of you have come to change your mind over time. The Bar has responded well to the AJFA Campaign. The purpose of this article is to remind the converted as to why they donate, and to persuade the unconverted as to why they should.

Our current system of law has, as its theoretical core, two primary principles. The first is that the protections and prohibitions of our judicial system should apply with equal force to all citizens regardless of their economic status, religious beliefs, gender status or racial identity. The second principle is that an adversary system, characterized by a presentation of evidence by partisan advocates, will result in the most accurate and fair evaluation of contested issues of fact and law.

What we need to remember, however, is that the equality created by the operation of our judicial system is a formal or abstract equality, or in terms lawyers can understand, it is a "legal fiction." From the viewpoint of the civil court system, it matters not whether the participant is a major corporation with its concomitant wealth and legal expertise, or an indigent litigant who possesses no knowledge of the legal process. Both participants are subject to the payment of fees to gain access to the court system and both participants are expected to abide by the court's procedural requirements and rules of evidence. Thus, our judicial system ignores or represses the concrete disabilities or advantages of the participants and substitutes a formal or abstract equality.

When this abstract equality is combined with the adversarial system, however, the result can become a parity of justice. With the exception of the small claims court, most citizens of ordinary means (not even taking account those at the bottom end of the economic scale) do not possess the sacred and arcane knowledge necessary to participate in the legal ritual. If a litigant does not have sufficient surplus income which can be allocated to the purchase of a lawyer's services, those litigants are denied access to the forum in which they can vindicate a substantive legal right. If litigants seek to argue their own claims and can afford to pay court costs and bond costs, they will, in all probability, face a skilled and seasoned opposing counsel. The result of such an encounter is almost always foreordained. The creation of formal equality between litigants does not necessarily provide an equal opportunity for all citizens to benefit from the judicial enforcement of rights. "It was a wise man who said that there is no greater inequality than the equal treatment of unequals."²

GARY L. JOHNSON is a shareholder and reluctant member of the Management Committee at Richards, Brandt, Miller & Nelson.



Given the adversary nature of our judicial system, in order to ensure both ready access to an impartial court and a fair trial (advocates of similar training and expertise contesting the issues on a level playing field), we must – as a profession – take into account this fiction of formal equality between the parties. By this, I mean we must take into account the unequal distribution of wealth and income in this country and help to provide institutional mechanisms which redress this imbalance in resources by providing subsidized legal services to our fellow citizens who cannot afford to otherwise purchase the services of a lawyer. One such institutional mechanism is AJFA.

A hundred years ago there were a variety of alternative social institutions for resolving disputes among our citizens. There were a number of different ethnic, economic, religious and political institutions within which members could work out solutions to conflicts. For better or for worse, the evolution of modern commercial society has resulted in the diminishment of such organizations. More and more people turn only to the civil justice system as the sole method by which they decide their differences. This trend results in the court system playing a more central role in our society, becoming the collective pot in which

we stir all conflict resolution.

This growing tendency of turning to the courts for answers places certain additional responsibilities on the legal profession. Lawyers have become the gatekeepers to conflict resolution for all aspects of society. This has brought our profession influence and income. More importantly – and whether we want to admit it or not – this has imposed additional responsibilities on our profession. In a system in which the legal process is the touchstone of the administration of justice, it is lawyers who stand between the small business and the exercise of raw power by the government; it is the lawyer that stands between the consumer and abusive commercial practices by large corporate entities; it is the lawyer who will serve as the champion for an injured party who seeks legitimate economic redress for injuries suffered. In the 21st century, regardless of what my personal views on the matter might be, it will be lawyers, working on individual cases, who will facilitate, orchestrate and consummate the bulk of conflict resolution in our society. If we do not take concrete measures to ensure fundamental fairness in this process, then we have failed our profession, our fellow citizens and our society.

The United States Supreme Court in *Chambers v. Baltimore &*

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O.R.R., 207 U.S. 142, 148 (1907), expressed the fundamental reason why the activities of AJFA should be financially supported by every lawyer:

The right to sue and defend in the court is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government.

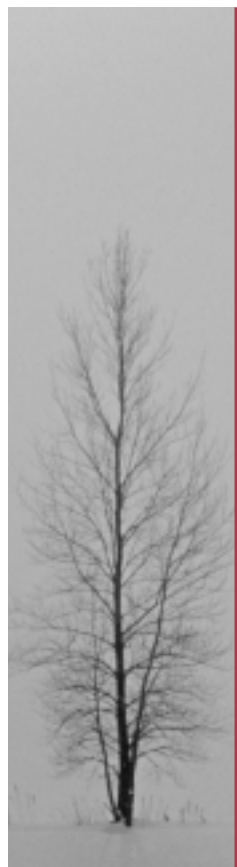
The courts of our country can only adjudicate those cases that are brought before them. An important element of legitimization of our system of government is the belief of equal access to justice. Because of this trend to “judicialize” every dispute from environmental issues to boundary arguments between neighbors, it is more important than ever to make equality before the law a living, breathing reality. It is in the best interests of all segments of our society to provide equal and ready access to the courts for everyone, and AJFA helps us take a step in that direction.

Those of you who know me also know that I do not always do as I say. The message, however, is not diminished in importance by knowing that the messenger may have feet of clay. For the legal profession, our reach must always exceed our grasp. For individual

lawyers, a donation to And Justice For All equivalent to two billable hours of work seems like a reasonable attempt to fulfill that goal. We can discuss, however, alternative ways to fund AJFA. I know our Bar dues are high, and it is with some reluctance (though not enough to stop me) that I advance the proposition that we increase our bar dues by some significant amount: \$150.00 or even \$200.00, specifically earmarked for AJFA. If we did something like that, lawyers would be making a statement to the public – and the Legislature – that we were literally putting our money where our mouth is. We would be setting the example that we could then urge others to follow.

Many of our fellow citizen’s experiences with the court system leave a bitter taste in their mouths. I am not advocating that we make sure everyone who comes to our courts enjoys a sweet banquet. We can, however, make that basic judicial soup from which we all partake, a little less salty.

1. Joni Mitchell, *Banquet*, (1972)
2. *Dennis v. United States*, 339 U.S. 162, 184 (1950) (Frankfurter, J. dissenting)



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Community Lawyering

by David Dominguez

"Lawyers have killed off more groups than ever would have died if the lawyers had never showed up. . . The lawyers want to advocate for others and do not understand the goal of giving a people a sense of their own power. Traditional lawyer advocacy creates dependency and not interdependency. With most lawyers there is no leadership development. . . They don't understand community, they don't understand organizing, they don't understand leadership development."

Community Lawyering at Brigham Young University Law School provides law students with a clinical opportunity to practice collaborative justice among low-income residents. By "collaborative justice," I am referring to the process of equipping and empowering everyday people, especially the poor, to act in concert as their own lawyers, pursuing legal problem solving at the grassroots level on terms most meaningful to their circumstances and relationships.² The thesis of Community Lawyering is that the quest for equal justice involves so much more than increasing the *supply* of pro bono legal services. The strategy of Community Lawyering is to lessen the growing *demand* for legal services by teaching the community what more it can do for itself, capitalizing on its own informal problem-solving capabilities as much as possible before turning to attorneys.

This article tells the story of Community Lawyering in action at the Boulders Apartments (Boulders) located in Provo, Utah. Boulders houses approximately 1400 residents whose yearly income ranges from the working poor to the poorest of the poor of Utah County. A Section 42 Housing and Urban Development housing project, Boulders consists of 388 units spread out on 18 acres. Approximately half of the residents receive public assistance and/or are under the care of Wasatch Mental Health, Utah State Workforce Services, Utah County Probation and Parole, and other service agencies and organizations. The multicultural, multinational, multilingual, multi-religious tenants are a microcosm of the most disadvantaged communities throughout Utah, especially those dealing with rapidly changing demographics. The residents face many legal and extra-legal issues in a wide variety of areas: domestic relations, housing, police relations, immigration, K-12 education, health care, employment, disability, cross-cultural

communication, and so on.

Early on in the 2003-2004 academic year, while law students and I were interviewing Boulders residents and working with them to form grassroots advocacy groups that would address a range of legal and extra-legal concerns, the residents started grumbling that there were too few public options for transportation to needed services and grocery stores.³ Then matters went from bad to worse: the bus company announced that the bus line that made a stop fairly close to their residential complex was being removed for lack of ridership.

As an impending negotiation with the bus company, we saw several possibilities. Given that there are a fixed number of buses and therefore a fixed number of bus routes, we figured that we could:

- a) Negotiate through demands and other hard positional tactics, shaming the bus company as a greedy enterprise that is failing to perform its role as a responsible corporate citizen.⁴ Further, speaking on behalf of Boulders residents, we could make an extreme – even deceptive⁵ – claim that we are overdue for a bigger slice of the fixed pie, insisting not only that the present bus line be left where it is but also (to provide some wiggle room for compromise) that it improve bus service by allocating even more of its limited commodity – "or else" (using as leverage⁶ that legal action is being considered against the bus company, municipality, and any other party that might cringe and fold when threatened with a lawsuit or negative publicity);
- b) Avoid positional bargaining and negotiate "on the merits" as problem solvers following the teachings of the Harvard Project on Negotiation,⁷ using the opportunity as representatives of Boulders residents to inform the bus company about residents' concerns⁸ and bus riding habits; to learn more about the bus company's interests, data on ridership,⁹ and history with poor communities;

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and to build a new relationship with the bus company not only to achieve the immediate or short-term goal of maintaining or improving bus service, but also to brainstorm how there can be greater substantive and relational gain for all parties;

c) Negotiate the issue at hand as prototypical of countless challenges that make up the larger problem – i.e., the culture of poverty – by inviting representatives of community policing, community nursing, other community agencies (e.g., the school district) and other local stakeholders to join the negotiation under b) to see where similarly situated populations in the City of Provo could also be served and related issues could also be addressed as part of the original “bus line” concern, perhaps adding new conditions or dimensions for packaging or bundling values, setting out a longer timeline with forecasted contingencies, shared risk covenants, and other mutually accountable provisions; or

d) Equip¹⁰ impoverished residents themselves to do at least b), preferably c), in the form of grassroots advocacy groups,¹¹ structuring opportunities for them to radically transform their self-perception from “have-nots” to “haves,” spreading their message to neighbors and turning them into organized resident committees, following the pattern set by the original “bus line” committee, reaching out to and making presentations to coalitions of grassroots organizations, at local college courses in sociology, mediation, family services, and the like, at city council meetings and before corporate officials.

If you guessed that we picked d), you sense already the ambitious spirit of Community Lawyering.¹² While we take the side of the underdog, we resist the serious temptation to play the hero. We refuse to set up social controversies as win-lose confrontations, fumbling and stumbling awkwardly to an isolated agreement whatever the cost to ongoing relationships. Instead, we teach ourselves, and then others, how to turn a setback in one area into multiple opportunities to bargain over the infrastructure of public roles and resource networks in many areas. Rather than conclude talks prematurely, once a fair settlement is reached with regard to one specific controversy, Community Lawyering continues to negotiate new ways of seeing, understanding, and building healthier communities – e.g., looking for internships opportunities for those who are poor and lack proper educational credentials or English proficiency but are possessed of natural aptitude and valuable experience; or inviting grassroots leaders to practice and improve their public speaking by giving talks to audiences unaccustomed to being on the listening end; or asking how an agreement might be of wider benefit to other community

advocacy groups; or scheduling a series of joint presentations to interested third parties; and other such novel arrangements and timelines that extend a “hand-up” to those in need.

We do this by focusing our attention on the untapped promise of the poor themselves to assert themselves as problem solvers.¹³ We prove to those with little or no access to justice that they hold the key to that door through joint-gain negotiation among themselves and with community agencies and public officials, not only with those who are already involved but other interested stakeholders as well.¹⁴ As much as experts – e.g., pro bono attorneys, public interest lawyers and ADR specialists – try to help by opening that door with respect to legal matters addressed in isolation from the larger context of privation, we impress upon those who live “24/7” with all the interrelated hardships of poverty that they must learn what more they can do for themselves to tackle the full range of their challenges.¹⁵ To this end, Community Lawyering acts as a catalyst for Boulders residents to find their group voice in public settings, making presentations on who they are, what struggles they face living in poverty, and how they would propose to take new steps and tell new stories.¹⁶

How does community lawyering work alongside indigent populations to make this happen? What bargaining methods does it offer to the poor in order to contest particular decisions in such a way that they use the moment to stretch the boundaries of politically constructed persona of those in power (sometimes even switching roles)? How does integrative bargaining empower the destitute to come together in novel organizing patterns, challenging established organizing principles of poverty?

In the above noted scenario involving the threatened removal of a bus route, for example, Community Lawyering helped Boulders residents get to know their neighbors by staging a huge festival¹⁷ followed by weekly potlucks at the on-site community resource center.¹⁸ Once residents formed a transportation advocacy committee,¹⁹ we invited to the next potluck the bus company representative who oversees the planning of bus routes. He was favorably impressed with the residents' presentation, particularly their initiative in arranging for a college sociology class to survey Boulders residents to determine which destinations were most popular and when the residents currently preferred to travel by bus to those destinations. Moreover, the residents reported, their collaboration had also tapped a college mediation class and a college political science class to assist in the larger conversation among Boulders residents on how transportation is in turn connected with a host of other resident concerns – employment opportunities, medical care, schooling, etc.²⁰ Thus, the residents

made a compelling case that the bus company's decision to sustain or remove a bus route should not be made hastily on economic considerations alone because changes in the routes would have multiple consequences for poor residents.

The bus official responded by telling the crowd that the existing line would not be moved after all and that he promised to appoint a member of his staff to join the growing number of community resources collaborating to improve bus (and shuttle) service in that area. Indeed, in furtherance of the collaborative effort, the bus company later decided that it would take the survey instrument designed by the college sociology class for the residents and put their own bus logo and contact information on it, thereby turning the survey into a joint effort at improving customer relations. The residents in turn accepted an unfamiliar assignment, namely as “deputies” of the bus company, authorized to speak in the name of the bus company while conducting the survey. Taking an extraordinary step, the bus company increased the likelihood of resident cooperation with the survey by preparing a customized flyer displaying useful routes, transfer points, and destinations, all from the reference point of Boulders Apartments, and by pledging thousands of dollars in bus tokens for the survey takers to hand out.²¹

As can be appreciated from this example of Community Lawyering in action, preparing low-income residents for these kinds of presentations and longer-term commitments requires many individual and group negotiations with many sets of people, starting among the law students themselves.²² Thus, collaborative justice is introduced and practiced among various audiences in an expanding, self-replicating pattern: among the law students and myself as we question the duties and objectives of traditional lawyering among the poor and consider the role of justice worker (a different calling); among law students and the poor as they challenge each other to move beyond consultation between an “expert” and “client” (a different conversation); and among impoverished communities and the larger society as together we form problem-solving partnerships built on mutual respect and responsibility (a different commitment).²³

1. William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 Ohio N. U. L. Rev. 455, 455-79 (1995): (reporting on observations of community organizers on the role of lawyers, including these by Ron Chisom).

2. These folks are, of course, prohibited from the unauthorized practice of law. But they are more than able to practice justice without a license. I am asked from time to time, “So is it necessary to acquire a formal legal education to practice community lawyering?” The answer is yes and no. An attorney brings essential analytical and interactive skills to bear. Legal education equips us as lawyers to spot impending



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legal problems and act alongside community partners to prevent them or at least to keep them more manageable. Also, nothing grabs the attention of various parties in American society more than having an attorney call them to arrange a meeting and make them aware that legal experts form part of the assembly and, therefore, a lawsuit could be filed. But the answer is also "no" insofar as collaboration, by definition, integrates the best interests of laypeople, including the very poor, relegating the legal system to a back-up, secondary option behind negotiation. For a complete discussion of my Community Lawyering course, see David Dominguez, *Redemptive Lawyering: The First (and Missing) Half of Legal Education and Law Practice*, 37 Cal. West.L. Rev. 27 (2000); and *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering* (forthcoming).

3. The Boulders manager reported to us that each week there were between 20 and 25 shopping carts strewn about the grounds. Since the only bus route that was available to take the residents to the grocery store stopped three blocks away, required transfers and was very roundabout in getting to the grocery store, the residents walked to the nearest supermarket, a little over a mile away, and then took it upon themselves to "borrow" shopping carts to transport their grocery bags back home.
4. Saul D. Alinsky, *Rules for Radicals: A Pragmatic Primer for Realistic Radicals* 129, 139 (1971) ("In a fight almost anything goes. . . [Attend the enemy's concert after being] fed nothing but baked beans, and lots of them."
5. In Gerald B. Wetlaufer, *The Ethics of Lying in Negotiation*, 75 Iowa L. Rev. 1219 (1990), the author quotes James J. White, "To conceal one's true position, to mislead an opponent about one's true settling point, is the essence of negotiation." In the same vein, see Charles B. Craver, *Negotiation Ethics: How to Be Deceptive Without Being Dishonest/How to Be Assertive Without Being Offensive*, 38 S. Tex. L. Rev. 713, 734 (1997): "I suggest that the fundamental question is not whether legal negotiators may use misrepresentations to further client interests, but when and about what they may permissibly dissemble. . . [N]egotiation interactions involve a deceptive process in which a certain amount of 'puffing' and 'embellishment' is expected. . . Attorneys who believe that no prevarication is ever proper during bargaining encounters place themselves and their clients at a distinct disadvantage, since they permit their less candid opponents to obtain settlements that transcend the terms to which they are objectively entitled."
6. G. Richard Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People* 89-114 (1999) (once fairness arguments fail, achieve your goals a la Donald Trump by flexing the muscle that can make their life worse off).
7. See, e.g., Robert H. Mnookin, *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (2000).
8. It may startle the reader to learn that some Boulders residents fear riding the bus because they have gotten lost along the bus route, have discovered too late that they boarded the wrong bus (especially when transferring from one bus to another), or have frozen up when trying to speak to the driver or when sorting out the correct amount of money to pay the fare.
9. Not surprisingly, there were at least two sides to this story. The bus company later produced data on daily ridership to prove that, pursuant to the standards of the industry, it was not economical to keep the route where it was. The residents, on the other hand, reported on the results of interviews and group meetings they (and we) conducted: the route in question was impractical since it required two transfers (and nearly two hours) to get to a grocery store. The residents believed that the route in question was designed to accommodate college students and mall shoppers, not the transportation needs of Boulders residents.
10. By "equip" I am referring to a 4-step process that is continually looping back: explain the skill in words, demonstrate it while the resident observes, let the resident take a turn while we watch, evaluate and explain once again, repeating the cycle. Even as residents step forward and assume more responsibility for the negotiation, the students and I continue to actively negotiate with other residents and institutional representatives. Dale Minami, *Asian Law Caucus: Experiment in an Alternative*, 3 AMERASIA JOURNAL 28,38-39 (1975) ". . . [T]he Caucus strives to create an informed and educated community empowered to assert their rights and to participate actively in American society. Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 Col.Hum.Rts.L.Rev. 67, 109 (2000): "The activist lawyer not only interacts with the client on a non-hierarchical basis, but also participates with the client in the planning and implementation of strategies that are designed to build power for the client and allow the client to be a repeat player at the political bargaining table." Zenobia Lai, Andrew Leong & Chi Chi Wu, *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 UCLA ASIAN PAC. AM. L. J. 1 (2000) (Lawyers can help achieve goals of the community but should not be the ones deciding what those goals are in the first instance.)
11. Paul Harris, *The San Francisco Community Law Collective*, 7 Law & Policy 19, 20-22 (1985): "Our goal was to build the power of community groups. The preferred tactics were working as house counsel to organizations and advising them how to avoid the law and, where appropriate, how to use it. . . [W]e attempted to help people recognize their own potential and stood behind them when they exercised that power. In this way the human being goes through a transformation-is empowered-and does not look to the legal system as a savior."
12. Robert M. Ackerman, *Disputing Together: Conflict Resolution and the Search for Community*, 18 Ohio St. J. on Disp. Res. 27, 30 (2002): "In some instances, collaborative, consensus-building processes have at their core the idea of building community support for public policy initiatives or community projects."
13. In *Social Justice: Professionals, Communities, and Law* (Martha R. Mahoney, John O. Calmore, Stephanie M. Wildman, eds. 2003), the excellent casebook that I assigned for my 2003-2004 Community Lawyering class, the editors point out: "Movements for transformation take place through the lives and work of people and communities for whom lawyers are at most a small part of the story. Therefore, an important question for lawyers working on social justice issues is how to carry out their professional work in ways that empower the people whose lives are involved. . . Is the goal of legal work for social justice to win recognition of rights, such as passing a statute against discrimination, or is the ultimate goal a change in culture and practice in a society that brings greater equality for all?" *Id.* at 763
14. Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. Rev. 1747, 1756-59 (2000): "By contrast, groups seeking social justice tend to define injustice more broadly. To fuel political movements, they expand the law's narrow framing of injustice and focus on historical facts to more fully portray what happened and why it was wrong. In this way, history becomes a catalyst for mass mobilization and collective action aimed at policymakers, bureaucrats, and the American conscience."
15. I take to heart the criticism that we are collaborating with legally unrepresented poor people – albeit on very friendly terms – and altering their opportunity to understand and pursue their legal rights against an adversary. Paul Brest & Linda Hamilton Krieger, *Lawyers as Problem Solvers*, 72 Temp. L. Rev. 811, 831-32 (1999): "The lawyer who views herself as 'counsel to the situation,' rather than her clients, may deprive the clients of the unqualified commitment they have reason to expect." Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons*, 85 Calif. L. Rev. 79 (1997). As explained *infra*, the motivation behind our effort is two-fold: first, to provide an alternative to waiting patiently until enough lawyers volunteer to help folks like the Boulders residents; and, secondly, to offer a working critique of the view that the legal system provides good recourse in the first instance.
16. See Thomas B. Stoddard, *Bleeding Heart: Reflections on Using the Law to Make Social Change*, 72 N.Y.U. L. Rev. 967 (1997) (arguing that advocates for social justice need to collaborate on a "cultural-shift" and not simply settle for a rule change. To secure a culture-shift, the grassroots collaboration must appeal to the widest possible audience)
17. We brought together many organizations, including America's Promise and its "five promises," to stage the festival at Boulders in November 2002. The theme was "for the children/para los niños." Although there are 1400 Boulder residents, a gathering of somewhere between 1,500 and 2,000 folks joined together at Boulders for an unprecedented outpouring of resident goodwill. It would be an understatement to report that the city was pleasantly surprised. Newspaper accounts before the event quoted longtime neighbors who uniformly cast a dismal outlook, saying nothing good could come from the folks at Boulders – e.g., "This is a waste of time. These people want to live that way." See, Amy K. Stewart, *Bridging the Gap Between Neighbors, Low-Income Tenants*, DAILY HERALD A1 (October 27, 2002) When Boulders residents shocked everyone by coming outside and joining the fun, the city and press were amazed, stirring optimism that much more was possible and in the offing. See Justin Hill, *Provo Setting Up Police Substation in Apartment Complex*, DAILY HERALD A1,A4 (April 16, 2003); Akea Gibby and Kathy Hyde, *Best Practices Story*, AMERICA'S PROMISE NEWSLETTER (March 5, 2003); Jesse Hyde, *Provo Apartments Losing Their Complex*, DESERET NEWS B1, B6 (May 5, 2003)
18. The Boulders Community Resource Center was itself a result of integrative negotiation among Boulders residents and Boulders management pursuant to training and assistance provided by Community Lawyering during the 2002-2003 school year. A

long story made very short is that residents, upon being introduced to each other, quickly discovered a common, even compelling, shared interest in public safety. Once learning to present themselves as a group, they linked their common cause for improved police services and traded on differences with the police, resulting in a new onsite police substation. The substation underwent metamorphosis pursuant to resident input and participation, emerging as a community resource center offering, among other activities and services, weekly classes in English-for-Speakers-of-Other-Languages, medical screenings, and a summer sports league for Boulders kids.

19. This committee was composed of residents and representatives from community service organizations.
20. The relationship between college students and the residents, instigated by presentations by Community Lawyering students, has produced its own revelations. The law students and undergraduates are thrilled to be involved in field work that makes their education more meaningful while residents are equally delighted that their grassroots advocacy could be so beneficial to higher education. Each group is enjoying the discovery of mutual-need.
21. The Transportation Committee has served as a prototype, motivating other Boulders resident committees to broaden their collaboration on such pressing matters as neighborhood watch, family mediation services, afterschool programs, outreach to immigrants, and other concerns. In fact, for many Boulder residents the presentation to the bus company was a turning point in participating in grassroots advocacy. They saw what a difference it made for them to come together and speak at a public meeting. They witnessed a range of resident voices offering excellent ideas (substantive gain) and speaking constructively, building on each other's comments (process gains). After the potluck, their evaluations made plain to us how excited they are

becoming at the prospect of contributing their viewpoints at upcoming gatherings, including college courses, neighborhood coalition meetings, and city council sessions. As part of the strategy to set in motion the next stage of collaborative justice for other resident committees, the Transportation Committee invited representatives of various community agencies to the potlucks: e.g., the police officer in charge of community policing; a community service provider who works directly with residents on issues involving transportation, mentoring, and career development; and the local agency concerned with challenges faced by the disabled and elderly.

22. William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 Ohio N. U. L. Rev. 455, 455-79 (1994): (reporting on observations of community organizers on the role of lawyers, including these by Barbara Major: "[L]awyers have to learn how, with all of their skills, to journey with the community. This journey has to involve the community really getting a sense of who they are, in the sense of beginning to understand their own power. In working with community, the wisdom or the knowledge of the lawyer does not outweigh the wisdom and knowledge of the community, about itself especially.")
23. Dean Hill Rivkin, *Reflections on Lawyering for Reform: Is the Highway Alive Tonight?*, 64 TENN. L. REV. 1065, 1065-69 (1997): "Finally, there is a growing feeling that the reform lawyering of the past should be supplanted by a versatile, multi-layered advocacy more characterized by community, compromise, and conversation; that the ethic or resistance that characterized reform litigation in the past should be replaced by an ethic of connections – one of building alliances and creating alternative institutions, not engaging in guerrilla warfare."

Pro Bono Profile: Lauren I. Scholnick

by Anne Milne



Lauren I. Scholnick is a partner in the firm of Strindberg & Scholnick, LLC. She has been volunteering at the Guadalupe Center's legal clinic since 1999.

For the last five years, Lauren Scholnick has been volunteering one Tuesday night a month at Guadalupe Center legal clinic.

Lauren says she volunteers after work, "because I know how hard it is to get legal help within our system. It is often confusing and frustrating for people to figure out what they should do when confronted with a legal problem even if they speak English. By helping those who primarily speak Spanish at the Guadalupe, we are able to help people with language barriers access and navigate the system to solve their legal problems. That language barrier means that many people are taken advantage of."

Lauren considers the walk-in legal clinic at Guadalupe Center to be "a great volunteer project." According to Lauren, you commit to staff the clinic and supervise law students for two hours each month. When you get there, you pick up cases and review them with the students. Then you help students follow

through with whatever needs to be done: write letters, develop evidence, negotiate settlements, or help clients through small claims or Utah antidiscrimination hearings. This takes no more than an additional one to four hours each month. "Even with a small investment of time, you see real, favorable results for the clients and growth of the students into real lawyers."

The best thing about her experience has been helping law students help real clients with real problems, "especially seeing the enthusiasm they have for the process. I'm always so proud of them when they resolve a problem for our clients." The one thing she hadn't expected was the huge variety of legal problems she sees at the Guadalupe clinic. Everything comes through the clinic's door - from consumer issues, to employment questions, to criminal matters, to intellectual property concerns. One guy said Oliver Stone stole his movie screenplay.

Lauren feels strongly that all lawyers (who, she points out, rank 8th highest in income in Utah, according to a *Salt Lake Tribune* poll) should give back to the community, not just with money, but also with time. "This is the most direct way I can think to do that."

Needs of Elderly Committee Pro Bono Project

by TantaLisa Clayton

For over ten years, the Needs of the Elderly Committee has sponsored a very successful pro bono project. This project provides legal assistance to the patrons of Salt Lake County senior centers. Volunteer attorneys have scheduled appointments to meet with elderly individuals at the senior centers to assess the individuals' need for legal and/or community services. The volunteer attorneys may make referrals to other attorneys or to relevant community resources. They may decide to take a case. However, the volunteer attorneys cannot represent the individual unless it is done on a pro bono basis.

Each appointment is scheduled for twenty minutes. The volunteer attorneys are generally scheduled to meet with the seniors during the lunch hour, usually between 11 and 1. The Committee provides volunteers with a packet containing relevant brochures and referrals. Volunteers are also sent reminder letters about the appointments.

The majority of the questions asked by the seniors are regarding wills and estate planning. However, the questions cover almost the entire spectrum of legal problems people encounter. Volunteer attorneys may be asked about anything from dog bites to divorces.

The seniors are very grateful for and appreciative of the time donated by the volunteer attorneys. They value the fact that someone has taken the time to listen to them and is trying to help solve their legal problems. The volunteer attorneys may be able to provide answers to a problem that the senior may have been worrying about for months or even just provide confirmation or reassurance of what others have told them.

Over the years, this project has continued to grow. As part of an ABA/Borchard mini-grant, the Committee has recently expanded our visitations to include subsidized senior housing units in Salt Lake County. We are now providing "house calls" to seniors who may not be physically able to travel to a senior center.

We are currently providing visitations to all the senior centers in Salt Lake County, with an average of three consultations per senior center visit. This total pro bono service amounts to approximately 57 consultations per month and 684 consultations per year.

This very successful program has been possible because lawyers (currently around 50) and law firms have donated both attorney and administrative time to the program. Most attorneys who have volunteered continued to do so because they have found it to be a rewarding worthwhile endeavor.

If you are interested in volunteering or have questions regarding this project, please contact either:

Mary Jane Ciccarello Chair of the Needs of the Elderly Committee. She can be reached at Henry and Ciccarello. The phone number is 272-3511. Her E-mail address is mjc@elderlawutah.com.

Ilona Kase Pro Bono Assistant at the Utah State Bar. Her hours are Monday, Wednesday and Friday from 1 to 5. Her phone number is 257-5516. Her e-mail is probonoasst@utahbar.org.

TANTALISA CLAYTON, past Chair of the Needs of the Elderly Committee, is currently practicing Elder Law at Utah Legal Services.



Two Places to Use Your Skills

If you are thinking that you might like to render pro bono assistance, you might want to consider two legal clinics that currently need help: The Clinic for the Deaf and Hard of Hearing and the Clinic for Spanish Speakers.

The Clinic for the Deaf is sponsored by the Utah Division of Services for the Deaf and Hard of Hearing, and only those deemed deaf or hard of hearing can use these services. The legal clinic for this group is held the 3rd Wednesday of each month from 4:30 pm to 6:30 pm at the Division's offices, 5709 South 1500 West, Salt Lake City. Clinic attendees must make appointments. This avoids down-time for volunteers. Appointments last 30 minutes, during which time the volunteer lawyers assess the person's problem and direct him or her to sources of help. The Division provides lawyers with interview space and a sign language interpreter. The well-equipped office is

conveniently accessed by major highways. Because clinic hours are near the end of the day, you can leave work a bit early and volunteer on your way home.

The law clinic for Spanish Speakers is a day-time pro bono option for those who are willing to see clients for 30 minute appointments during the day and have Spanish speaking abilities. The Spanish Speakers clinic operates the 1st and 3rd Thursday of each month. Lawyers meet with clinic attendees by appointment only. The clinic is located downtown at the Community Legal Center, 205 North 400 West (just west of West High School). Parking is available.

Utah Legal Services coordinates and helps staff the legal clinics. Any inquiries about volunteering at one of these clinics should be made to Fred Anderson at (801) 328-8891 extension 3379.

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Commission Highlights

During its regularly scheduled meeting of March 11, 2004 which was held in St. George, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. John T. Nielsen commended Debra Moore and George Daines as well as John Baldwin and Richard Dibblee for their diligence in working with this year's legislature. He also noted that the Bar's Legislative Affairs Committee puts in many hours scrutinizing new bills affecting lawyers and the legal system. He announced that former Bar President and long-time representative Scott Daniels would not be seeking re-election.

The Bar did not take a formal position on HB 140 (parental rights) and the small claims court legislation (HB 124) initially had a small glitch but was successfully amended to reflect the Supreme Court's rulemaking and UPL authority under the state constitution. Amendments in the mandatory medical arbitration (SB 245) area were made with the Bar opposed to proposed, but not adopted, language by Sen. Blackham and Rep. Urquhart affecting attorney fees in contingent medical malpractice matters. HB 234 repealed the definition of the practice of law but extended the repeal date for the more general provisions in section 78-9-101 to May of 2007.

2. John Adams discussed aspects of the *Brown v. Board of Education* project. Approximately 60 law firms are helping to

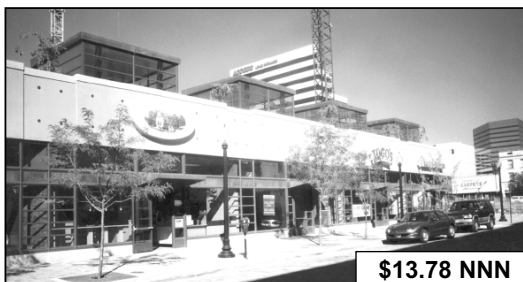
sponsor the project and the Litigation Section had made a very generous contribution as well. The Litigation Section will also be very active in the classroom presentations and the Young Lawyers Division has taken a central role in assisting with the film festival. Although *Brown's* anniversary date is May 17th, the formal kick-off (co-sponsored by the Bar and the Task Force on Racial and Ethnic Justice) will take place on April 30th at the Salt Lake City downtown library.

3. The Utah Attorney Generals Office has requested disclosure of lawyers' law schools as they wish to form an alumni group. The request has been publicized in various formats asking for lawyer feedback. The response was positive and after further discussion the motion passed without dissent.
4. Discussion was held on section creation. An initial start-up fund of \$500 to demonstrate sufficient serious interest will now be required and the minimum number of active members will be 25. The motion to adopt this new policy passed unanimously.
5. The Bar Commission nominated Mark Nash to the Court Technology Committee.
6. Vickie Kidman, Chair of the UPL Committee, appeared to discuss the recent amendments that the Committee had made to the proposed rules. A lengthy discussion followed. Proposed revisions will be submitted to the AOC.
7. David Bird reported on various topics at the Judicial Council's most recent meetings.
8. John Baldwin and Katherine Fox explained that pursuant to the ABA's request to state court chief justices, our Court has asked that the Bar submit a special exemption admission rule for certain military lawyers. The motion to approve the proposed rule passed with none opposed.
9. George Daines reviewed the upcoming retreat and noted that he would like time to discuss Bar finances and legislative relationships.
10. The motion to nominate David Bird and Gus Chin for candidates for President-elect passed unanimously.

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.

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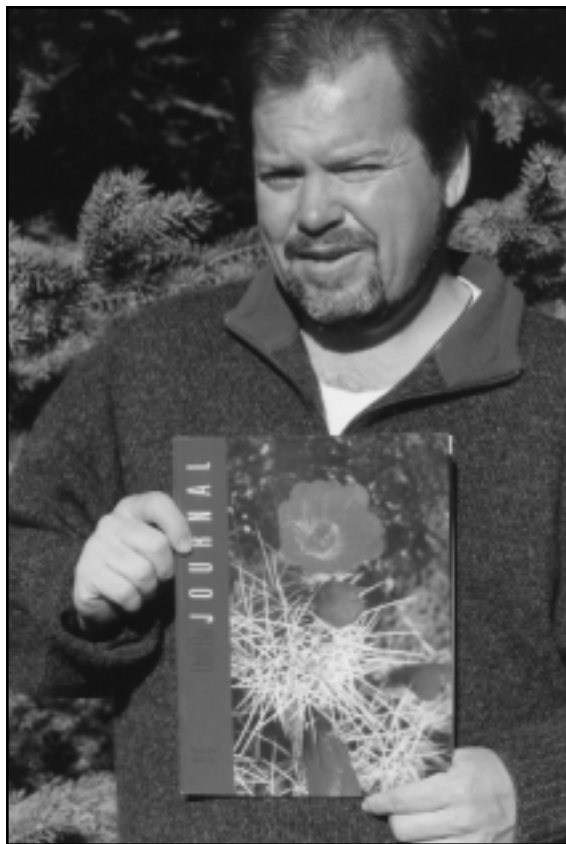
Bar Commission Selects the “Cover of the Year”

The winner of the *Utah Bar Journal* Cover of the Year award for 2003 is the October issue, featuring Claret Cup Cactus near Moab, Utah. It is a beautiful photograph taken by Bret B. Hicken of Spanish Fork, Utah. The Cover of the Year was selected by the Utah Bar Commission.

Mr. Hicken is one of 55 attorneys or members of the Paralegal Division of the Utah Bar whose photographs of Utah scenes have appeared on at least one cover since August, 1988. This is Mr. Hicken's 14th photograph to be featured on the cover of the *Bar Journal*. Covers of the year are framed and displayed, along with winners from prior years, on the upper level of the Law and Justice Center. The editorial board of the *Bar Journal* welcomes your feedback about the covers.

Congratulations to Mr. Hicken, and thanks to all who have provided photographs for the cover.

Pictured is attorney and photographer, Bret B. Hicken, holding a copy of the Utah Bar Journal Cover of the Year for 2003.



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Barbara V. Melendez
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has joined their firm.
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Arlen Card
has also joined the firm as an associate
and will specialize in
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Notice of Proposed Amendments to Utah Court Rules

The Supreme Court invites comments to proposed amendments to the Utah Rules of Civil Procedure. The comment period expires June 1, 2004.

Highlights of proposed amendments:

URCP 47. Jurors. Conforms rule regulating conversing with jurors to caselaw.

URCP 63. Disability or disqualification of a judge. Advises the judge regarding voluntary recusal upon remand after reversal.

URCP 64, 64A, 64B, 64C, 64D, 64E, 66, 69, 69A, 69B, 69C. Rules regulating writs for the seizure of property completely rewritten. Substantial reorganization. Substantial changes to procedures.

To see proposed rule amendments and submit comments, refer to:
<http://www.utcourts.gov/resources/rules/comments/>

To view the text of the amendments from the web page, click on the rule number. You will need Adobe Acrobat Reader 6.0, which you can download for free by clicking on the link to Adobe. Proposed rule amendments are also published in the Pacific Reporter Advance Sheets.

You can comment and view the comments of others by clicking on the "comments" link associated with each body of rules. It's more efficient for us if you submit comments through the website, and we encourage you to do so. After clicking on the comment link, you will be prompted for your name, which we request, and your email address and URL, which are optional. This is a public site and, if you do not want to disclose your email address, omit it. Time does not permit us to acknowledge comments, but all will be considered.

Submit comments directly through the website or to:

Tim Shea
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241

Fax: 801-578-3843

Email: tims@email.utcourts.gov (Please include the comment in the message text, not in an attachment.)

One method of submitting a comment is sufficient.

Mailing of Licensing Forms

The licensing forms for 2004-05 are scheduled to be mailed during the last week of May and the first week of June. Fees are due July 1, 2004; however fees received or postmarked on or before August 1, 2004 will be processed without penalty.

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

If you need to update your address information, please submit the information to Arnold Birrell, Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111-3834. You may also fax the information to (801)531-9537, or e-mail the corrections to abirrell@uathbar.org.

Request for Comment on Proposed Bar Budget

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 2004 and ends June 30, 2005. The process being followed includes review by the Commission's Executive Committee and the Bar's Budget & Finance Committee, prior to adoption of the final budget by the Bar Commission at its June 4, 2004 meeting.

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

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

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Utah State Bar Request for 2004-2005 Committee Assignment

The Utah Bar Commission is soliciting new volunteers to commit time and talent to one or more of 18 different committees which participate in regulating admissions and discipline and in fostering competency, public service and high standards of professional conduct. Please consider sharing your time in the service of your profession and the public through meaningful involvement in any area of interest.

Name _____ Bar No. _____

Office Address _____ Telephone _____

Committee Request

1st Choice _____ 2nd Choice _____

Please describe your interests and list additional qualifications or past committee work.

Instructions to Applicants: Service on Bar committees includes the expectation that members will regularly attend scheduled meetings. Meeting frequency varies by committee, but generally may average one meeting per month. Meeting times also vary, but are usually scheduled at noon or at the end of the workday.

Committees

1. **Admissions.** Recommends standards and procedures for admission to the Bar and the administration of the Bar Examination.
2. **Annual Convention.** Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.
3. **Bar Examiner.** Drafts, reviews and grades questions and model answers for the Bar Examination.
4. **Bar Exam Administration.** Assists in the administration of the Bar Examination. Duties include overseeing computerized exam-taking, security issues, and the subcommittee that handles requests from applicants seeking special accommodations on the Bar Examination.
5. **Bar Journal.** Annually publishes editions of the *Utah Bar Journal* to provide comprehensive coverage of the profession, the Bar, articles of legal importance and announcements of general interest.
6. **Character & Fitness.** Reviews applicants for the Bar Exam and makes recommendations on their character and fitness for admission.
7. **Client Security Fund.** Considers claims made against the Client Security Fund and recommends payouts by the Bar Commission.
8. **Courts and Judges.** Coordinates the formal relationship between the judiciary and the Bar including review of the organization of the court system and recent court reorganization developments.
9. **Fee Arbitration.** Holds voluntary arbitration hearings to resolve disputes between members of the Bar and clients regarding fees.
10. **Ethics Advisory Opinion.** Prepares formal written opinions concerning the ethical issues that face Utah lawyers.
11. **Governmental Relations.** Monitors proposed legislation which falls within the Bar's legislative policy and makes recommendations to Bar Commission for appropriate action.
12. **Law Related Education and Law Day.** Organizes and promotes events for the annual Law Day celebration.
13. **Law & Technology.** Creates a network for the exchange of information and acts as a resource for new and emerging technologies and the implementation of these technologies.
14. **Lawyer Benefits.** Reviews requests for sponsorship and involvement in various group benefit programs, including health, malpractice, disability, insurance and other group activities.
15. **Mid-Year Convention.** Selects and coordinates CLE topics, panelists and speakers, and organizes social and sporting events.
16. **Needs of the Elderly.** Assists in formulating positions on issues involving the elderly and recommending legislation.
17. **New Lawyer CLE.** Reviews the educational programs provided by the Bar for new lawyers to assure variety, quality and conformance with mandatory New lawyer CLE.
18. **Unauthorized Practice of Law.** Reviews and investigates complaints made regarding unauthorized practice of law and recommends appropriate action, including civil proceedings.

Detach & Mail by May 31, 2004 to:

N. George Daines, President-Elect • 645 South 200 East • Salt Lake City, UT 84111-3834

May is Declared “Elder Law Month”

Governor Olene Walker has declared May as Elder Law Month. (The text of that declaration appears below.) Also, the National Academy of Elder Law Attorneys (NAELA) has designated the month of May as National Elder Law Month.

With the rapid increase in the number of older Utahns, the need for Elder Law Attorneys is growing. Elder Law Attorneys deal with a wide range of matters, including estate issues, guardianships, conservatorships, financial exploitation, Medicare, Medicaid, Social Security, protecting and recovering assets, etc.

DECLARATION

Whereas, Elder Law is an important growing area of legal practice in Utah as the percentage of older Utahns increases; and

Whereas, the quality of life for older Utahns is important to all Utah families who are concerned about the welfare of their aging spouses, parents, grandparents, aunts, uncles, friends and neighbors; and

Whereas, the National Academy of Elder Law Attorneys has designated the month of May as “National Elder Law Month;” and

Whereas, we value the protection of our elderly population, their autonomy, financial security, physical safety and peace of mind;

Now, Therefore, I, Olene S. Walker, Governor of the state of Utah, do hereby declare May 2004 as Elder Law Month in Utah.

American College of Trial Lawyers Announce New Utah Fellows

The Utah Fellows of the American College of Trial Lawyers are proud to announce that Dennis Ferguson, Lisa Remal, and David Williams have been inducted into the College.

The American College of Trial Lawyers strives to improve the standards of trial practice, the administration of justice and the ethics, civility, and collegiality of the trial profession. Invitation to Fellowship is extended only after careful investigation to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility, and collegiality.

Lawyers must have a minimum of fifteen years' trial experience before they can be considered for Fellowship and membership in the College cannot exceed 1% of the total lawyer population of any state.

The Utah Fellows of the College congratulate Dennis Ferguson, Lisa Remal, and David Williams, and welcome them to the Fellowship.

LITIGATION ALTERNATIVES

- ◆ Family Law Mediation
- ◆ Special Master
- ◆ Child Welfare Law

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Discipline Corner

PUBLIC REPRIMAND

On December 31, 2003, the Honorable Roger S. Dutson, Second Judicial District Court, publicly reprimanded Samuel J. Conklin for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(b) and (c) (Fees), 1.15(b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Conklin was retained to represent a client in an employment matter. The time spent by Mr. Conklin on the client's case was not accurately reflected on the client's bill. Mr. Conklin admitted to the client that the work was over-charged, but he did not have time to look into the matter. Mr. Conklin did not respond to the client's inquiries concerning the bill and failed to promptly deliver the settlement funds to the client. Mr. Conklin also failed to respond to the Office of Professional Conduct's ("OPC's") requests for information.

In another matter, Mr. Conklin was retained to negotiate a settlement with a title company. The client was the spokesperson for the client's family. There was no written communication regarding the basis and rate of Mr. Conklin's fee, although it was reasonably foreseeable that the attorney's fees would exceed \$750. The case was settled and Mr. Conklin received the settlement check. The client inquired as to why the settlement check had not been forwarded to the client. Mr. Conklin did not promptly respond to the client and later claimed that the settlement check had not been forwarded to the client because it was being held against an outstanding debt owed to Mr. Conklin by the client's sibling for services rendered in another matter. Mr. Conklin charged the client a contingent fee based upon a percentage of the settlement amount, without a written statement. Mr. Conklin sent a letter to the OPC concerning health problems, but failed to respond to the OPC's requests for information.

Mitigating factors include: Mr. Conklin experienced personal problems during the period relevant to the complaints against him.

Aggravating factors include: Mr. Conklin has a prior record of discipline; there are multiple offenses; and Mr. Conklin has substantial experience in the practice of law.

RECIPROCAL DISCIPLINE

On March 15, 2004, the Honorable Ernie Jones, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Discipline: Probation, placing Mark H. Gould on probation for a period of one year.

In summary:

In a disciplinary order of the United States Tenth Circuit Court of Appeals ("the Court") Mr. Gould was ordered to either pay a

\$100 sanction or resign from the Bar. Mr. Gould did not submit the sanction amount to the Court, nor did he tender a letter of resignation. The court issued a show cause order, but Mr. Gould did not respond. The Court then concluded that Mr. Gould should be disbarred. As a result of this, the United States District Court of Utah ("U.S. District Court") issued an order to show cause for reciprocal discipline. Mr. Gould responded. The U.S. District Court found that there was no evidence of misconduct involving fraud, dishonesty, or moral turpitude, and in consideration of Mr. Gould's mitigation of a psychological condition, the U.S. District Court concluded that Mr. Gould should be placed on one year of probation and ordered not to commit any further violation of the Rules of Professional Responsibility or engage in other unprofessional conduct.

Mitigating factors include: Mr. Gould's personal and emotional problems are causally connected to the misconduct, other penalties and sanctions, and cooperative attitude toward proceedings.

ADMONITION

On March 16, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 8.1 (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client in a divorce modification. A trial was held and the court ordered opposing counsel to prepare the Findings of Fact, Conclusions of Law, and Order ("findings"), but opposing counsel did not do so. Several months later the attorney drafted and submitted findings to the court. The findings were entered by the court. Therefore, the opposing counsel also filed findings with the court. The two findings were inadvertently signed by the court. The attorney was still counsel of record at the time the two sets of findings were entered and a letter reflects that opposing counsel notified the attorney of the two signed findings. In response to requests for information from the Bar and in initial testimony at the disciplinary hearing, the attorney denied knowledge of the other order, until the Bar complaint was received by the attorney. However, in subsequent testimony from the attorney at the disciplinary hearing, the attorney admitted to a conversation with the complainant prior to the filing of the Bar complaint "Do you want me to take care of this other order?"

ADMONITION

On March 22, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.1 (Competence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client charged with serious multiple felonies. The attorney was also instructed to prepare a counterclaim in the client's civil case. The client retained the attorney's services in the criminal and civil matters concurrently. The client claimed that evidence of fraud on the part of the opposing party in the civil case was provided to the attorney, but the attorney failed to amend the client's civil pleadings to include a requested cause of action for fraud.

SUSPENSION

On March 29, 2004, the Honorable David L. Mower, Sixth Judicial District Court suspended Jeffrey P. Gleave from the practice of law for a period of three years for violation of 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Termination Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct. On March 19, 2002 the Court had previously entered an order placing Mr. Gleave on interim suspension pending final disposition of this disciplinary matter. The effective date of the Court's Order of Suspension is therefore March 19, 2002.

In summary:

Mr. Gleave had three client Bar complaints, where the Court found that Mr. Gleave violated Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 8.1 (b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct) of the Rules of Professional Conduct. However, the most serious misconduct that the Court found was with respect to Mr. Gleave's criminal convictions leading to a violation of Rule 8.4(b) of the Rules of Professional Conduct. Mr. Gleave was convicted of Damage To Or Interruption Of A Communication Device, a Class B Misdemeanor, Assault, Domestic Violence, a Class A Misdemeanor, Child Abuse, a Class A Misdemeanor, Aggravated Assault Against A Peace Officer, a Third Degree Felony, and Possession Of A Controlled Substance, a Third Degree Felony. On February 23, 2001, Mr. Gleave was sentenced to one year in the Sevier County Jail with credit for time served. The statutory sentence for the conviction of each count was stayed with a thirty-six month probation period and numerous probationary requirements.

Mitigating factors include: Mr. Gleave is affected by a mental disability or impairment, and that mental disability or impairment causally contributed to his misconduct.



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We Have Signed On

by *Sanda R. Kirkham, Chair – Paralegal Division*

On October 16, 2003 the Utah Supreme Court accepted the report of its Advisory Committee on Professionalism and approved the twenty Standards of Professionalism and Civility recommended in the report. As chair of the Professionalism Committee, Justice Michael J. Wilkins of the Utah Supreme Court, has been asked by the Court to focus on methods to make the Standards of Professionalism and Civility the behavioral norms for the Utah legal profession. He strongly urges support from Utah State Bar members.

The Paralegal Division of the Utah State Bar agrees with these standards and hereby adopts and promotes them. We believe that these new standards are applicable to paralegals, in that we are held to the same standards of professional conduct as the attorneys in the State of Utah. We feel that we have a professional duty to uphold these standards. We support and encourage our supervising attorneys to do the same. We embrace this opportunity to show our professionalism to all attorneys, judges and fellow paralegals throughout the state.

At this time, we make a firm commitment to Justice Wilkins and to the Utah State Bar to pursue, both individually and as a Division, to adhere to each of the twenty Utah Standards of Professionalism and Civility. We will strive to conduct ourselves with personal courtesy and professional integrity to reinforce our ethical obligation to maintain and foster these standards. We are committed to fulfill this duty to all attorneys, to all clients, and to the Court acting with utmost respect, courtesy and cooperation.

We are proud to announce that Justice Wilkins will be our keynote speaker at the Division's upcoming Paralegals' Day Celebration. This celebration will be held on Thursday, May 20, 2004, at the Grand America Hotel. We hope to see all paralegals and supervising attorneys there. For more information on Paralegals' Day please see our invitation in last month's *Bar Journal*, watch for your invitation in the mail, contact Marion Eldridge with the Utah State Bar at 531-9077, or contact our Education Chair, Cynthia Mendenhall at 532-2666 or cynthia@crslaw.com. We appreciate your support on this special occasion.

At the end of your rope?

Confidential* assistance is available for any Utah attorney whose professional performance may be impaired because of depression, substance abuse or other problems.

Disciplinary crisis? Contact LHL for confidential support and information about the process when facing disciplinary actions.

If you need a helping hand, please call the numbers listed below:

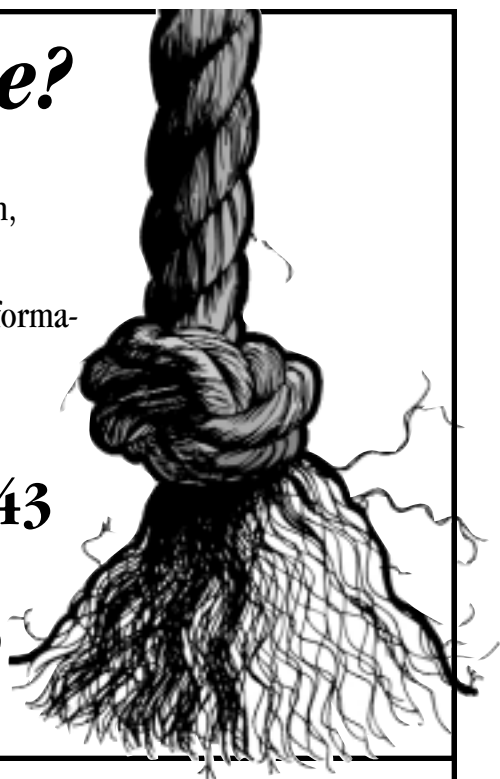
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*See Rule 8.3(d), Utah Code of Professional Conduct.



Spring Practice Updates

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
05/06/04	Annual Spring Corporate Counsel Section Seminar. 9:00 am – 1:30 pm. Topics: Legislative Update, Business Development, Warranties, Ethics – Current Events. \$45 section members, \$85 others (lunch included).	3.5
05/13/04	Annual Business Law Section Seminar. 9:00 am – 12:00 pm. Sarbanes-Oxley and Corporate Governance, House Bill 240 Utah Venture Capital Enhancement Act, Legislative Update. \$25 section members, \$45 others.	3
05/14/04	Annual Family Law Section Seminar. 9:00 am – 5:00 pm. Non-Traditional Relationships – There Are More Than One Kind, New Rules on Professionalism and Civility, Case Statute and Rule Update, Contempt Orders. \$125 section members and paralegal division members, \$155 others.	TBA
05/19/04	Annual Labor & Employment Law Section Seminar. 9:00 am – 1:00 pm. Agenda pending.	3.5
05/21/04	Annual Elder Law Seminar. 8:30 am – 12:45 pm. Housing options for the older client. \$85	4 incl. 1 Ethics
06/18/04	Annual Paralegal Division Seminar. Full day. Agenda pending.	TBA

Additional Seminars

DATES	EVENTS (Seminar location: Law & Justice Center, unless otherwise indicated.)	CLE HRS.
06/11/04	New Lawyers Mandatory. 8:30 am – 12:30 pm. \$50	Satisfies New Lawyer Requirement
06/17/04	Nuts & Bolts of Personal Injury. 5:30 – 8:45 pm. \$50 YLD, \$60 other.	3
07/21/04	OPC Ethics School. Full day. \$125 before 07/09/04, \$155 after. Pre-registration recommended. Space limited.	6 Ethics Credit Mandatory course for those admitted on motion only.
07/14–17/04	Annual Utah State Bar Convention. Sun Valley Idaho – brochure enclosed.	

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)):

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Classified Ads

RATES & DEADLINES

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

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

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

FOR SALE

Office Furniture: Mahogany table desk, credenza, end table, blue leather executive chair, two blue leather client chairs. \$1,350 call 272-9100.

NOTICE

(ARLIE) DUANE HUGHES told his children that he completed a new will (or codicil) after Dec. 18, 1991, but before he passed away Dec. 18, 2003. If you are the attorney that handled this, please call Diane at (801) 967-1640, any help or information is appreciated.

POSITIONS AVAILABLE

In-house legal department of established corporation seeking legal secretary/assistant in real estate, contract, and other general corporate matters. Will also assist executives with general corporate and travel needs. Good organizational, interpersonal, and editing skills required. Good working environment. Salary DOE. Please send resumes to Christine Critchley, Confidential box #9, 645 South 200 East, Salt Lake City, Utah 84111-3834.

Looking to get out of the rat race? Position available for attorney with five to ten years experience in transactional work and estate planning. Some established clients and litigation experience preferred. Please send resume to: Christine Critchley, Confidential box # ____, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111-3834 or ccritchley@utahbar.org.

BARBARA L. MAW, P.C. Ins.Def Firm seeking associate 2+ years of experience; Litigation experience preferred. Unique opportunity for an individual interested in general and commercial litigation. Competitive salary and benefits. Respond: office@fre700.com or 185 So. State St. Suite #340, Salt Lake City, Ut 84111.

Civil Trial Lawyer – The Salt Lake City Branch Legal Office of Farmers Insurance Exchange is seeking a civil trial lawyer with a minimum of six years experience, preferably tort litigation. Salary commensurate with experience. Excellent benefit package. EOE. Send confidential inquires to: Petersen & Hansen, c/o Office Administrator, 230 South 500 East, Suite 400, Salt Lake City, UT 84102 or fax to (801) 524-0998.

United States District Court District of Utah: Half-time Law Clerk to the Honorable Paul G. Cassell. One-year position with a possible extension to two years. Closing Date: June 25, 2004. Starting Salary \$24011 (JSP 11) to \$28778+ (JSP 12) or JSP 13, commensurate with qualifications and experience. Starting Date: October 4, 2004. Applicants should send letter, resume, writing sample and three references to: Ms. Yvette Evans, United States District Court, 350 South Main Street, Room 112, Salt Lake City, Utah 84101. Equal Employment Opportunity. Visit us on the web at utd.uscourts.gov.

Appellate Staff Attorney – Court of Appeals: The Court of Appeals is seeking an attorney to provide assistance in docketing statements, motions, applications for certificates of probable cause, petitions for interlocutory appeal, petitions for extraordinary writs. Excellent legal research and writing skills are required. Must be a member in good standing of the Utah State Bar. Resume, transcripts and a recent writing sample must be submitted along with state court application. Hiring range: \$20.17 (41,954) – \$30.29 (63,003), plus generous employer paid benefits. Closing date: June 15, 2004 at 5:00 pm. Complete job announcements and application may be obtained from our website at www.utcourts.gov or from Human Resources, Administrative Office of the Courts, 450 S. State Street, 3rd floor North. Phone: 578-3890/3804. Return applications to Director of Human Resources, P.O. Box 140241, SLC, UT 84114-0241. EOE.

Mid-size AV rated Salt Lake firm seeks associate with 2-5 years litigation experience for family law practice. Strong writing skills and good courtroom presence required. Please respond to Christine Critchley, Utah State Bar, Confidential Box #2, 645 South 200 East, Salt Lake City, UT, 84111 or e-mail ccritchley@utahbar.org.

POSITIONS SOUGHT

Older Attorney/CPA with taxation and estate planning background, and substantial litigation experience in government, business and insurance seeks position with law firm, corporation, government or association. Present firm breaking up. Contact Utah State Bar, Confidential Box #23, 645 South 200 East, Salt Lake City, UT 84111.

OFFICE SPACE/SHARING

SLC Offices Available Immediately: Classic 2 story brick Victorian office building: executive offices & conference room on 116 S. 500 East for sale @ \$460K or lease @ \$11/ft. Please contact Tom Brooks for details – AllPro Realty 1 (801) 534-1573.

Executive Offices and Virtual Offices now available in the Chateau Building. Includes receptionist, copy room, break room, law library and conference room. Secretarial and research services available. Secretarial bays also available. Rates from \$400 per month. Please call Michelle at (801) 373-1112 for more information.

OFFICE SPACE FOR RENT: Share with other attorneys. Fax, copy machine, receptionist, plenty of parking, easy access to freeways. Call 685-0552.

OFFICE/OFFICES FOR RENT: Historic Holladay Farm House on Highland Drive, high visibility w/possible signage, fully restored and beautified, must see to appreciate. (801) 484-3000.

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Farmington Office Space for rent for one or two attorneys. Share with other attorneys. Fax, copy machine, conference room, kitchen, plenty of parking and easy access to freeway. Wally at 451-8400.

Professional Office Suites of Boise – Executive and Virtual Office Suites available starting at \$245 per month! Instant telephone and high-speed Internet access; full administrative support services; receptionist/answering services; fully furnished executive suites; conference room access and much more! Contact POS of Boise at 208-947-5895, officeinfo@officeidaho.com or www.officeidaho.com.

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