

Utah Bar Journal



Volume 19 No. 6
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VISION OF THE BAR: *To lead society in the creation of a justice system that is understood, valued, respected and accessible to all.*

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

COVER: Historic courthouses located throughout the state of Utah. (See cover key on page 5.) Used by permission, Utah State Historical Society. All rights reserved.

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Submission of Articles for the Utah Bar Journal

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

1. Length: The editorial staff prefers articles having no more than 3,000 words. If you cannot reduce your article to that length, consider dividing it into a "Part 1" and "Part 2" for publication in successive issues.
2. Format: Submit a hard copy and an electronic copy in Microsoft Word or WordPerfect format.
3. Endnotes: Articles may have endnotes, but the editorial staff discourages their use. The *Bar Journal* is not a Law Review, and the staff seeks articles of practical interest to attorneys and members of the bench. Subjects requiring substantial notes to convey their content may be more suitable for another publication.
4. Content: Articles should address the *Bar Journal* audience,

which is composed primarily of licensed Bar members. The broader the appeal of your article, the better. Nevertheless, the editorial staff sometimes considers articles on narrower topics. If you are in doubt about the suitability of your article for publication, the editorial staff invites you to submit it for evaluation.

5. Editing: Any article submitted to the *Bar Journal* may be edited for citation style, length, grammar, and punctuation. Content is the author's responsibility—the editorial staff merely determines whether the article should be published.
6. Citation Format: All citations should follow *The Bluebook* format.
7. Authors: Submit a sentence identifying your place of employment. Photographs are encouraged and will be used depending on available space. You may submit your photo electronically on CD or by e-mail, minimum 300 dpi in jpg, eps, or tiff format.

Cover Art

Members of the Utah State Bar or members of the Legal Assistants Division of the Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should send their photographs, along with a description of where the photographs were taken, to Randall L. Romrell, Esq., Regence BlueCross BlueShield of Utah, P.O. Box 30270, Salt Lake City, Utah 84130-0270, or by email to rromrell@regence.com if digital. If non digital photographs are sent, please include a pre-addressed, stamped envelope for return of the photo and write your name and address on the back of the photo.

Interested in writing an article for the Bar Journal?

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

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

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Letters Submission Guidelines:

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

Cover Key

The photographs on the cover are, from top to bottom and left to right, as follows:

1. Utah County Courthouse
2. Emery County Courthouse
3. Carbon County Courthouse
4. Juab County Courthouse
5. Ephraim City Courthouse
6. Piute County Courthouse interior
7. Millard County Courthouse
8. Davis County Courthouse
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10. Utah County Courthouse interior
11. State House in Fillmore
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The Past, the Present, and the Future of our Bar

by Gus Chin

Over the years, as well as fairly recently, some have expressed concern about the relevancy of the Utah State Bar. I hope that our members realize that in addition to the essential regulatory functions of admissions and discipline, the Bar provides services intended to assist each of us professionally and otherwise. These services include, but are not limited to, CLE, information access via a well designed and managed web site, lawyer assistance programs, and a variety of volunteer opportunities.

As president of the Bar, I am mindful of the legacy of my predecessors and fellow commissioners. Their energy, effort, and commitment coupled with the assistance of a dedicated Bar staff headed by an exceptional executive director have made a difference and continue to make the Bar most relevant. I am convinced of the importance of the Bar as a stable, structured organization whose purpose includes “service to the public and legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of the law.”

In preparation for my year as your president, I looked back at some of the earlier concerns of the Bar. Much to my surprise, many of our present concerns were being discussed several decades ago. For example, in 1931, Dean Brayton, our first Bar President, in his message published in the first issue of the *Utah Bar Bulletin*, (predecessor to our present *Utah Bar Journal*) commented on the unjust criticism of our profession and how the organized state bar can do much to eliminate the criticism and “reestablish the profession with the whole judicial structure, in the public mind, where it rightfully belongs, – as the chief protector in our form of government, of the public welfare.” Today, in addition to admissions and discipline, among our many concerns are the issues of access to justice, diversity, professionalism and civility.

It is evident that over the past seventy five years our Bar has undergone many important changes. As reported in the February 1932 edition of the *Utah Bar Bulletin*, in 1931 when the Utah State Bar was officially established, bar membership totaled 711.

There were 663 active members, 27 inactive members, and 21 honorary members. Bar dues for active members were \$5 and \$2.50 for inactive members. Today, seventy-five years later there are 6,849 active members and 1,999, inactive members. Bar dues for active members over 3 years are \$370 , and \$210 for those under 3 years, and \$80 or \$120 for inactive members depending on the level of service desired. Additionally, in 1931 there were six bar commissioners. Today we have thirteen commissioners, eleven who are elected by the members and two public members who are non-attorneys appointed by the Utah Supreme Court.

The growth of the bar and the bar commission has allowed greater representation and has improved bar governance. Most importantly, the establishment of sections and committees as well as the growth of regional and local bars have fostered professional development, networking and mentoring opportunities. One important change has been the increase in the number of female attorneys as well as attorneys of color. All of these changes have affected the administration of justice.

I firmly believe that as an organized, integrated bar we can collectively make a difference in the administration of justice and restore honor and public respect for our profession. I, as well as the commission, acknowledge and appreciate the many who commit time, as well as effort, in service to our profession; mentoring, volunteering, providing leadership in sections, committees, regional and specialty bars, and rendering pro bono service.

I close with the following words expressed by William M. McRea, the second President of the Bar who at the first annual meeting of the Utah State Bar said:

“The hope of improving the administration of justice, of elevating the standards of our profession is not a forlorn hope. On the contrary, it is a hope capable of very practical fulfill-



ment, and the hearty cooperation of members of the Bar has not only given encouragement to the officers, but also given every assurance of our being able in the future to accomplish lasting good. For the coming year we earnestly bespeak your continuous interest and support. ...Let us collectively strive to uphold the dignity of our calling, improve the administration of justice, and uphold the supremacy of the law and the courts."

Looking into the past, and reviewing our present priorities, I am confident about the future of our Bar. I ask for your support in making a difference as we forge into the future. Finally, I would be remiss if I did not remind us all of the importance of balance and to take a moment to pause and enjoy time, as well as activities, with family and friends.

A History of Utah State Bar Presidents

1931	Dean F. Brayton	1970-1971	Hon. J. Thomas Greene
1932	William M. McCrea	1971-1972	Hon. Burton H. Harris
1933	M.B. Pope	1972-1973	Hon. J. Robert Bullock
1934	Samuel C. Powell	1973-1974	Lavar E. Stark
1935	Allen S. Tingey	1974-1975	Joseph Novak
1936	Frank A. Johnson	1975-1976	Harold G. Christensen
1937	Royal J. Douglas	1976-1977	Clyde C. Patterson
1938	W.G. Vancott	1977-1978	James B. Lee
1939	LeRoy B. Young	1978-1979	John. C. Beaslin
1940	Burton W. Musser	1979-1980	W. Eugene Hansen
1941	E.A. Roger	1980-1981	Carmen E. Kipp
1942-1944	Hon. Joseph E. Nelson	1981-1982	Duane A. Frandsen
1944-1945	Melvin C. Harris	1982-1983	O. Wood Moyle III
1945-1946	Orval Hafen	1983-1984	Hon. Stephen H. Anderson
1946-1947	George C. Lowe	1984-1985	Brian R. Florence
1947-1948	Bryan P. Leverich	1985-1986	Norman S. Johnson
1948-1949	Carvel Mattsson	1986-1987	Bert L. Dart
1949-1950	Walter G. Mann	1987-1988	Reed L. Martineau
1951-1952	Hon. A. Sherman Christensen	1988-1989	Kent M. Kasting
1952-1953	Elliot W. Evans	1989-1990	Hon. Hans Q. Chamberlain
1953-1954	Hon. Henry Ruggeri	1990-1991	Hon. Pamela T. Greenwood
1954-1955	Hon. Dallas H. Young	1991-1992	Hon. James Z. Davis
1955-1956	Ray S. McCarty	1992-1993	Randy L. Dryer
1956-1957	A. H. Nebeker	1993-1994	H. James Clegg
1957-1958	Hon. James P. McCune	1994-1995	Paul T. Moxely
1958-1959	Ira A. Huggins	1995-1996	Dennis V. Haslam
1959-1960	A. Pratt Kesler	1996-1997	Steven M. Kaufman
1960-1961	George S. Ballif	1997-1998	Charlotte L. Miller
1961-1962	Rex J. Hanson	1998-1999	James C. Jenkins
1962-1963	Elder James E. Faust (Oldest Living)	1999-2000	Charles R. Brown
1963-1964	A. Thorpe Waddingham	2000-2001	Hon. David O. Nuffer
1964-1965	Charles E. Welch	2001-2002	Hon. Scott Daniels
1965-1966	Ray R. Christensen	2002-2003	John A. Adams
1966-1967	Hon. Cullen Y. Christensen	2003-2004	Debra J. Moore
1967-1968	David S. Kunz	2004-2005	N. George Daines
1968-1969	Scott M. Matheson	2005-2006	David R. Bird
1969-1970	Sterling R. Bossard	2006-2007	Augustus (Gus) G. Chin

Best Wishes and Many Thanks from the Chief Justice

Best wishes to the Utah State Bar on the occasion of its 75th birthday. Article VIII, Sec. 4 of the state constitution gives the Utah Supreme Court responsibility for governing the practice of law, including admission to practice and the discipline of admitted lawyers. For better or worse, the Court and the Bar are permanently entwined.

Some months back, I received a copy of a publication titled *The Utah Bar Bulletin*, Official Organ, The Utah State Bar, Vol. 1, October, 1931. This publication appears to be the great-grandfather of our current *Bar Journal*. As I read the familiar “Message from the President,” it was clear that the public image of the legal profession in 1931 was no less ambiguous than it is today. President Dean F. Brayton wrote:

Because it is one of the most essential cogs in the present complicated social, economic and political machine, the profession of the law has come in for more than its share of criticism from the public. This criticism has been directed both at us as individuals and as a class; – at us as individuals because of asserted sharp practices by many of us and at the profession generally because of its alleged failure, and that of our whole judicial structure, properly to function in the development of our civilization.

The writer is one of those who feel that the present Organized State Bar can and will do much to eliminate this criticism and to re-establish the profession, the whole judicial structure, in the public mind, where it rightfully belongs, – as the chief protector, in our form of government, of the public welfare. How will this be done?

First, by the careful scrutiny and examination of applicants for admission to the practice of law;

Second, by enforcing strictly disciplinary rules of conduct among its members; and

Third, by such contact with boards and commissions and with agencies offering service of a legal character as will acquaint them with the ability of the profession and the judicial department within their fields to render, to the public, the best possible service.

The old adage “the more things change, the more they remain the same,” comes to mind. Then, as now, the mission of the Utah State Bar is to serve the public and the profession by promoting justice, professional excellence and respect for the law. Professionalism in the practice of law is the essential component in such service. Former Justice Sandra Day O’Connor defines professionalism as follows:

To me, the essence of professionalism is a commitment to develop one’s skills to the fullest and to apply that responsibly to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and a willingness to subordinate narrow self-interest in pursuit of the more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all.

In this 75th anniversary year, I wish to pay tribute to and sincerely thank those members of the Utah Bar who have served in the past or are serving now on a Supreme Court committee. These lawyers render countless hours of invaluable service to the Court, the profession, and the public with all too little praise or reward. At the current time, there are 72 lawyers serving on six Supreme Court Advisory Rules Committees. There are 20 lawyers painstakingly drafting model civil and criminal jury instructions. There are 28 lawyers serving on the Ethics and Discipline Committee of the Utah Supreme Court. There are 16 lawyers serving on the Supreme Court’s Advisory Committee on Professionalism. And, there are 129 lawyers presently serving as pro tempore judges. In so many ways, the judiciary cannot function without you. On behalf of the Utah Supreme Court and the Judicial Council, please accept my sincere gratitude for your efforts and my best wishes for the continued success of the partnership between the bench and bar in promoting justice.

The Honorable Christine M. Durham

Separate Branches, Balanced Powers: Governing the Judicial Branch

by *The Honorable Christine M. Durham*

Introduction

Utah's judicial branch of government has an unusually effective governance system. With representatives from all court levels and from the Utah State Bar, the Utah Judicial Council is in a position to evaluate all parts of our court system with a perspective on local needs but independent of parochial interests.

The Utah Judicial Council has a role that in many states is performed solely by the Supreme Court or the Chief Justice. Although the Supreme Court justices of those states work diligently to represent to the other branches of government and to the public the needs of their court systems, their own current experiences are necessarily limited to the needs of the Supreme Court. Certainly some individuals have some experience in other courts, but just as certainly, not the level, nor the breadth, nor the immediacy of the experience available to the Judicial Council in Utah's system.

Many other states have judicial councils. Some are advisory; others, like ours, are directly responsible for operations. In Utah, the chief justice is the presiding officer of the Judicial Council, but the Council as a group, through its rulemaking responsibility, heads the Judicial Department and is responsible for its administration. The National Center for State Courts reports that we are unique in that regard. In all other states, the court of last resort or the chief justice individually heads the judiciary.¹

Our system has evolved over the years, but we did not arrive at our current position by accident. In 1972, the Legislature, with participation from the courts and the Bar, studied court management to arrive at recommendations that would serve as an action plan for the next 30 years, perhaps beyond.² Working within the constraints of the original Judicial Article of the Utah Constitution, the report envisioned a Judicial Council, an administrative office, uniform rules of administration and procedure, a revised Judicial Article, a revised judicial code, uniform funding, and a court structure even more highly unified than the one that eventually developed. Despite being supported by many prominent lawyers and legislators at the time, those initial efforts at systemic court management failed.³ But perseverance has paid off; we now enjoy a system that bears a striking resemblance to the 1972

recommendations. We hope that today we have the same foresight demonstrated by those upon whose work we build.

Public Trust

Article VIII of the Utah Constitution creates the Judicial Department, or branch, of government. After only modest amendments since statehood, the Legislature re-wrote the entire article in 1985. In doing so the Legislature and the public reposed in the judiciary an extraordinary degree of trust to govern itself. All of us in the Judicial Department – judges, clerks, probation officers, administrators, and others – must repeatedly earn that trust by exercising sound judgment.

Article VIII, Section 12 creates the Judicial Council and vests in it the final authority to make rules administering the courts. Whereas the revised Judicial Article reserves to the Legislature the authority to amend rules of evidence and procedure adopted by the Supreme Court, there is no comparable authority to amend the Judicial Council's rules of administration. The traditional balance of powers between the three branches of government remains, and the Judicial Council governs the judiciary within that framework.

Office of the Guardian ad Litem

Over the years the Legislature has endorsed that earlier vote of confidence by entrusting to the Judicial Department the responsibility to manage programs that might have been supervised by others.

The Office of the Guardian ad Litem represents children caught up in the physical and emotional trauma of child abuse and neglect. The GAL lawyer is the child's representative, advisor, counselor,

HON. CHRISTINE M. DURHAM is the Chief Justice of the Utah Supreme Court and Presiding Officer of the Utah Judicial Council



and voice in the courtroom. In 1996, the Legislature assigned to the Judicial Council responsibility to oversee that office.

The Council sees its role as fiduciary representative of the GAL rather than as supervisor. Just as the GAL is not aligned with the Division of Child and Family Services or the parents, neither is the GAL aligned with the court. The guardian ad litem independently represents the best interests of the child. The Administrative Office of the Courts supports the GAL with human resource services, information technology services, facilities, and other direct administrative services that an office as small as the GAL cannot provide on its own. But the Council maintains significant separation from policy and litigation operations. We have put in place a standing committee of community representatives, selected from public and private nonprofit organizations, to develop policies that ensure compliance with the law and the independent representation of children. The GAL has its own budget, separate from that of the Judicial Department, so that the Legislature, not the court, determines the amount of funding. We ensure physical separation of the local GAL attorneys from judges and court staff. If children are indeed our most important resource, then they deserve the best possible representatives when their safety is being balanced with the integrity of their family.

Public Evaluation of Judges

The revised Judicial Article provides for the unopposed retention election of judges, largely removing from judicial elections the taint of campaign contributions. During a period when hundreds of thousands, sometimes millions, of dollars are being spent on judicial campaigns in other states, Utah's former Chief Justice Richard C. Howe was able to report to the Conference of Chief Justices several years ago that he had to spend only \$50 for his re-election – the amount of the filing fee.

One of the first programs delegated to the Judicial Council after passage of the revised Judicial Article concerned shared responsibility for the public evaluation of judges, so that voters could responsibly decide whether to retain a judge. The Legislature designed the overarching policies for judicial performance evaluation and charged the Council with responsibility for the details.

In addition to measures for timeliness, continuing education and compliance with the Code of Judicial Conduct, the judicial performance evaluation program relies heavily on the opinions of lawyers – and in the district court, jurors – who appear in court. Lawyers and jurors are the public's eyes and ears in the courtroom. If lawyers collectively are of the opinion that a judge does not properly apply the rules of evidence, the public should know that. If jurors believe that a judge is not fair to both parties, again, the public should know that. Lawyers and jurors answer these and many other questions on behalf of the public.

Single Line Item Budget

As important as anything else in our history has been the Legislature's trust in the Judicial Department to handle its budget as a single line item. Line items are important because the Executive and Judicial Departments cannot move money from one to another. While courts in other states have had to attempt to direct legislatures by court order how to appropriate money, the Utah Legislature has been generous to the judiciary, both with the appropriation itself and the flexibility to manage the appropriation. For our part, we limit our budget requests to only the courts' most critical needs through a public process open to representatives of the executive and legislative budget offices. Developing our spending plan is also a very open process, conducted in Council meetings attended by executive and legislative budget officers. We believe that responsible government means revealing to the public and to the rest of government the fiscal state of the Judicial Department. That accountability has served us well.

Unified Court System

The highly coherent system in which we operate should not be taken for granted. The Juvenile Court has long enjoyed the benefits of a structure in which the state, rather than individual local governments, is responsible for funding and administration. The Legislature unified District Court operations in 1988. The Utah judiciary is now able to operate as a single entity, rather than as multiple county-level courts. The Justice Courts remain locally funded and locally operated, but, even here, the Judicial Council's uniform administrative policies govern hiring, performance standards, and other important aspects of court operations.

Statewide policies have many advantages, but one deserves special mention: our efforts with statewide electronic case management systems. Utah is well into its second-generation case management systems for District Court and the Appellate Courts and has just implemented its second-generation system for the Juvenile Court. These systems do much more than just keep statistics. These are the systems by which we manage our cases, from scheduling a court interpreter to tracking case progress to issuing a court order. By pooling the resources that would have otherwise gone to 29 county IT departments charged with serving everything from the county commission to the department of public works, the courts have been able to automate not just record keeping, but many parts of our record processing. We are well positioned for our work with the Bar on electronic filing.

Organization

A surgeon does not enter the operating room without supporting staff; neither does a judge enter the courtroom without extensive support. The Judicial Council, through its boards and committees and the administrative office of the courts, bears ultimate

responsibility for the policies – and by extension the daily operations – by which the courts deliver timely justice.

Every level of court – district, juvenile, justice and appellate – has a board of judges. Through these boards, the Judicial Department is able to increase participation in its own governance by involving judges in leadership positions. Even before the Judicial Council decides the budget priorities for the Judicial Department, each board considers the budget requests of the local courts, balances the competing needs, and assesses the top priorities for that court level. The boards research and propose policies for their respective level of court. They consider a policy's impact, and are instrumental in implementing policies once they are adopted. With the direct involvement of judges through the boards, the Judicial Council is much better able to consider, decide and implement court policies.

In addition to the boards of judges, the Judicial Council has a variety of standing committees to help with particular aspects of court work. The Guardian ad Litem Oversight Committee has already been mentioned. The Council also has a committee to research the policies and procedures for judicial performance evaluations, and committees on technology, uniform fine and bail schedules, judicial ethics, justice court standards, judicial education, facility standards, family law, judicial outreach, self-represented parties, interpreters, and mediation.

The committees offer judges throughout the state opportunities to be involved in governing the courts. More important, the committees offer the public and other government officials an opportunity to be involved. Thirty-five percent of all committee memberships are held by people outside the judiciary. Some of these are legislators, representatives of the executive branch, or city or county officials; some are lawyers, and many are citizens motivated enough to volunteer their time and experience to help the Judicial Council establish sound policies. The number of non-judicial representatives varies depending on the nature of the committee and its role. The Technology Committee, which primarily affects internal operating decisions, has one lawyer recommended by the Board of Bar Commissioners. In contrast, the Guardian ad Litem Oversight Committee has seven members, all drawn from outside the judiciary.

The Administrative Office of the Courts is the Judicial Council's administrative arm. The AOC staff keeps the courts moving forward and running smoothly. In addition to staffing the boards and committees just mentioned, the AOC staffs many of the Supreme Court's advisory committees, represents the Judicial Council and the courts before the Legislature and with the executive branch, provides research on policies that the Council and its boards and committees consider, and performs the complex, day-to-day

work that keeps an organization going: budgeting; accounting, human resources, technology, education, public information, and many other tasks. The support of knowledgeable and competent court administrators is essential to the running of Utah's courts.

Conclusion


Utah is fortunate to have a Judicial Council form of governance for the judicial branch, but the Council itself is only the tip of the iceberg. No group of 14 people could organize and operate an entity as complex as the judicial branch of government without substantial advice and help. The boards of judges, the Council committees – with attorney and citizen members – and the AOC serve this critical role to support the Council's leadership. Through the broad vision and attention to detail of the Council and all of its supporting cast, we in the judiciary work daily to deserve the trust placed in our hands.

1. State Courts Organization 1998. National Center for State Courts. Page 73.
2. Utah Courts Tomorrow: Report and Recommendations of the Unified Court Advisory Committee. Utah Legislative Council, September 1972.
3. A History of the Utah Judicial Council 1973 – 1997, May, Cheryll L., page 6., 1998.

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Seventy Five Years and Four EDs Later

by John Baldwin

My father was a lawyer for as long as I can remember before he sat on the District Court Bench. I grew up wondering where you took a deposition to, why we got calls from the jail in the middle of the night and thinking that his going to a Bar meeting was just another way of saying he was at the University Club. In sixth grade I did a report on careers. Even then I had heard that people thought there were too many lawyers. My father told me there would always be room for good lawyers. So I went to law school to become a good lawyer.

I graduated from law school at the University of Utah in 1980 and practiced law in a Salt Lake firm for two years, spent three more years in the AG's office, five years as Director of the Utah Securities Division and have been the Bar's Executive Director for sixteen. I paid my Bar fees every year, got involved in a couple of sections and hoped they never re-read my Bar exam because I didn't know how I passed in the first place. I read the old *Bar Bulletin* and paid particular attention to the discipline news.

L.M. Cummings was the first Executive Director of the Bar. He began when the Bar was organized as an association in 1931 and stayed on until 1958 when Dean Sheffield became the face of the Bar. I heard stories about Dean Sheffield throughout my childhood. Dean was the Bar for 27 years. He answered phones, spoke at conferences, met with the court, and directed the Bar at offices beginning at Continental Bank Building to the house on 2nd South. He ran the Bar exam when I took it in 1980. I can still see him standing before us in the old Hilton Motor Inn and telling us not to pay attention to the police dispatcher on the PA system in the room and focus on the real estate essay.

Under Dean's watch the Bar grew from a few hundred lawyers to a few thousand. The staff grew, the legal profession began to show signs of becoming more of a business, and new technology was introduced: IBM selectrics and fax machines and even fundamental word processing computers. In 1985, Dean retired and Steve Hutchinson came to shepherd an explosion of public services and member benefits as the Commission grew in number and took on more programs and forward-looking policies. Bar staff grew to meet the growing demands of the lawyers in the state and increasing needs to help find lawyers, improve legal education and expand the range of group benefit programs.

The Bar numbered 3,500 when I came on board. There were seventeen on the Bar staff, including two lawyers and two

secretaries in the disciplinary department. In the sixteen years since, the Bar has grown to 8,800 lawyers, staff has grown to 35 and there are 6 lawyers, 5 paralegals and staff support in the Office of Professional Conduct. Programs now also include free legal research on CaseMaker, and an expanded lawyers assistance program which includes both peer-to-peer help and professional counseling. The Bar communicates with its membership via this *Bar Journal* and monthly e-bulletins. The OPC gets 1,500 complaints yearly. Cases go to trial before a district court judge and are no longer heard by the Board of Bar Commissioners.

The regulation of the practice of law in Utah had its roots in the formal association of Utah lawyers in 1894 who sought to improve communications within the legal community and find ways of serving the general public. As the State Bar Association of Utah, they collected dues, elected officers, formed committees, lobbied, met in convention and socialized together. In 1931 the Utah Legislature codified the regulation of the practice of law within the state's Judicial Code by requiring "persons engaged in the practice of law" to be admitted to the Bar. The legislature also provided that the Court approve the Bar's rules and regulations under its constitutional authority.

In 1981 the Court promulgated the Rules for Integration and Management of the Utah State Bar, restating its inherent authority under the Utah Constitution to regulate the practice of law, delegating certain responsibilities to the Bar, and acting to "perpetuate, create and continue" the Bar under its "direction and control." In 1985 the Utah Constitution was amended to explicitly grant the Court authority to govern the practice of law. In 1991 the Bar incorporated as a 501(c)(6) Utah non-profit corporation at the request of the Court.

The Bar is housed in the Utah Law and Justice Center. The innovative building opened its doors eighteen years ago to permit the Bar to expand, hold CLE seminars and to service the needs

JOHN BALDWIN is the Executive Director of the Utah State Bar



of non-profit, community-based and public service programs designed to deliver educational, charitable and ADR at the grass roots level. The building was dedicated to be a gathering place for government and civic leaders and to make both traditional and “alternative” systems of dispute resolution more responsive to the needs of society. It was built primarily through contributions from several Utah based foundations and the generosity of many Utah lawyers.

Over 18,000 professional, community, governmental, and educational groups have met here, bringing over 400,000 people within the walls. The Center also hosts numerous programs to assist people with legal needs, including Tuesday Night Bar, Utah Dispute Resolution and Utah Law Related Education.

The Bar is financially healthy. The Bar Commission devotes considerable time and energy to assure that its accounting systems reflect accurate and timely financial reporting. Monthly financial reports and adopted policies and procedures are scrutinized by a separate Budget and Finance Committee consisting of CPA's, and lawyers with financial backgrounds. Along with the Budget and Finance Committee and outside auditors, the Commission has established comprehensive guidelines for the management of Bar funds and has updated financial reporting technology.

The Bar has budgeted to spend a little over \$4 million in the fiscal year through a balanced budget. Licensing fees from lawyers provide 62% of annual revenue, and the various CLE events, admissions fees, building room rental, *Bar Journal*

advertising, interest on accounts and other income-producing activities provide the remaining 38%.

The largest portion of the Bar's budget is used for core regulatory functions including the admissions investigation and character and fitness process, Bar application administration, Bar examinations, discipline, CLE and general Bar administration. At the advice of our Budget and Finance Committee and outside auditors, the Commission has set aside a \$200,000 annual contingency reserve for unanticipated annual needs, a \$200,000 capital reserve for replacement of depreciated property and a \$600,000 operations reserve for unanticipated declines in revenue.

Licensing fees began at a nominal amount of \$5 per year in 1931. This cost of doing business as a lawyer remained below \$50 through 1968. Then, as inflation became a fact of economic life and as Bar services began to grow, licensing fees increased steadily and incrementally until 1990,

when they were \$225 per calendar year. In 1990 the licensing fee cycle was changed to coincide with the Bar's fiscal year and fees were increased to \$350. Licensing fees have remained at that level now for sixteen annual budget cycles while the number of licensed lawyers has grown 72%, from 5103 to 8800.

I have been a lawyer for the last 26 years. I am proud of our profession and am confident that the leadership of your organized Bar will continue to faithfully fulfill its mission of serving the public and the profession by promoting justice, professional excellence, civility, ethics respect for and understanding of the law.

Utah State Bar Executive Directors

L.M. Cummings 1931–1958

Dean Sheffield 1958–1985

Steve Hutchinson 1985–1990

John Baldwin 1990–present

Utah State Bar Milestones

1931606 Members

1940808 Members

19732000 Members

19803264 Members

19905103 Members

20007155 Members

20068849 Members



Hon. Reva Beck Bosone
Utah's First Female Judge
Appointed in 1936



Hon. Raymond S. Uno
Utah's First
Minority Judge
Appointed in 1976



Hon. Pamela T. Greenwood
First Female
Bar President
1990–1991

Richard L. Bird, Jr. – Utah's Most Senior Practicing Attorney

by Gretchen C. Lee

A few legal pads and files are scattered on his desk. A calendar is sitting on the corner of his desk. The walls are lined with legal books. No computer is in sight. He sits comfortably behind his desk as he has for many years. In fact, seventy-three years later he is still practicing law. Admitted to the Utah Bar in 1933, Richard L. Bird, Jr. is the most senior practicing attorney in Utah. Nearly a centenarian, he will turn one hundred in April 2007. Mr. Bird can still be found most days at his office at 333 East 400 South at the firm of Richards, Bird and Kump.

Born and raised in Salt Lake City, Mr. Bird graduated from the University of Utah and then attended Harvard Law School. After graduating from Harvard in 1933 he returned to Utah for several years before accepting a position in the Anti-Trust Division of the Department of Justice in Washington DC. After four years in Washington he decided it was time to come home and “be a part of the Utah community.” Upon his return he clerked at the Utah Supreme Court, worked at both the Tax Commission and legislature, before finally turning to private practice.

Probate and domestic relations have been the heart of his practice. Lynn S. Richards, the senior partner of the firm passed away in 2001 at the age of 100. These days the firm consists of his son, David J. Bird, and Rod Kump. Mr. Kump has been practicing with Mr. Bird for over fifty years and still feels extremely fortunate to have joined such a solid firm and could not imagine having found



a better man to work with stating, “He is a fine, honest, gentleman and a good lawyer.”

As the years have passed, Mr. Bird admits that it is difficult to keep up with both the technological and legal changes but recognizes that he has a wonderful support staff which includes his secretary who has worked with him for over forty years. Despite his age creeping up on him he works about as hard today as he did years ago. He has, however, slowed down a bit on the golf course. An ever-present figure on the links at the Utah Bar conventions, he only made it out once last year and has yet to pick up the clubs this year.

Back at the office, however, he has no plans to close up shop. When recently asked whether he has thought

about retiring he stated that although he has thought about retiring he has never taken it seriously. If only we could all feel that way about our careers.

GRETCHEN C. LEE received her J.D. from Emory University in 1991. She is licensed to practice in NC, PA, and UT. She is an Articles Editor for the Utah Bar Journal.



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From the Desk of the General Counsel

by Katherine Fox

My name is Katherine Fox and I am the Bar's general counsel. I moved from Ann Arbor, Michigan (GO BLUE!), to Utah shortly before we had the "big flood" of 1983 and there was a river running down the middle of State Street, complete with splashing trout. I was delighted to see that Utah had so much water because I had been told it was a desert! It's fairly easy to write about the evolution of my position during the Bar's 75-year history because I was the first one to fill it. Prior to my arrival in 1996, the Bar did not have a separate office of general counsel. In the past, most of my job duties were divided and performed by others such as the executive director and the senior counsel in the Office of Professional Conduct. Other tasks either were handled by outside counsel, tackled by volunteer lawyers, or simply remained undone.

In 1991, the Final Report of the Utah Supreme Court's Special Task Force on the Management and Regulation of the Practice of Law echoed a finding by the ABA's McKay Commission on Evaluation of Disciplinary Enforcement: disciplinary counsel should not be general counsel to a bar association. A few years later, the Report of the Committee to Review the [former] Office of Attorney Discipline in 1995 took this observation one step further. It estimated that nearly 50% of the [former] chief disciplinary counsel's time was dedicated to general counsel work. The report recommended that based on the McKay Commission's findings and the Bar's discipline office workload, that a general counsel position be created. The position originally was designated as part-time and I actually worked part-time the first week I was here. After that, more work began floating into my office and later the workload transformed itself into a small avalanche.

What kinds of things do I do at the Bar? For starters, what I DON'T do (and others I encounter always seem to assume that I actually do) is attorney discipline. The general counsel provides for the legal needs for the Bar's governing entity, the Board of Bar Commissioners, and for the Bar in general. This includes, but is not limited to, providing for the Bar's insurance needs, drafting corporate minutes, and representing the Bar before the Utah Supreme Court on matters. I respond to subpoenas, handle lawsuits or work with outside counsel, and address the legal aspects of employment-related matters.

The position also entails drafting petitions to the Supreme Court for Bar rule changes. Bar rules, which are really Supreme Court rules which apply to the Bar, include such things as the disciplinary rules, Fee Arbitration and Client Security Fund rules, admission rules and the like. For instance, in addition to more substantive rule revisions, and in conjunction with those who work at the courts, I just finished a long-term project with the Administrative Office of the Courts that re-codified all the Bar rules, making them more uniform and Utah Code format compatible. I also regularly assist with the work of the Unauthorized Practice of Law (UPL) Committee with the committee chair and oversee the pro hac vice area.

The UPL area is often a fascinating (but frustrating) one. It never ceases to amaze me what non-lawyers believe they can do because "all the practice of law is just a bunch of memorizing stuff like the Utah Code." In talking with those individuals, I sometimes compare practicing law to practicing medicine and ask them if they think they are competent to perform surgery on their friends and family. Some of the most frustrating cases we see concern non-lawyers (usually self-styled as "financial planners") who draft and sell estate planning documents and later the "client" dies. Even when we are able to locate the person who drafted the documents, we can not resolve the problems that have been set in motion. "Notarios" are another significant issue in the UPL area. These Spanish speaking individuals take inordinate sums of money from unsuspecting victims to perform legal work (divorces and other family matters as well as immigration assistance) and often do nothing.

Finally, as appropriate and necessary, I interact with the licensing, admissions and discipline offices at the Bar and other Bar committees. My job includes lots of variety which makes it an interesting one (except for working on the re-codification project)!

KATHERINE FOX serves as General Counsel for the Utah State Bar.



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The More Things Change, the More They Stay the Same: Investigating and Prosecuting Allegations of Attorney Misconduct

by Kate A. Toomey

Does this sound familiar?

During the year, as usual, disciplinary matters have been referred to the Commission. Most of them have been the result of the client's being disappointed with the result of the litigation, or the amount of fees charged by the attorney.

It's an excerpt from an address given in 1945 by the president of the Utah State Bar.¹ A perusal of the Bar's early publications is a lesson not only on the enduring nature of the challenges of policing our own, but also the commitment of the Bar itself, through its leadership and its members, to serving the public and the system of justice with the highest degree of ethics and professionalism. The procedural mechanisms for meeting that commitment have evolved, but the themes endure.

A SHORT HISTORY OF PROFESSIONAL DISCIPLINE FOR ATTORNEYS IN UTAH

Professional Discipline Before the Bar's Integration

Published reports of attorney discipline appear in early volumes of the Utah Reports² and the Pacific Reporter long before the Utah State Bar was integrated in 1931.³ In the pre-1931 era, accusations and information from various sources⁴ were filed directly with the Utah Supreme Court, which referred the matter to a prosecutor,⁵ and appointed a referee to take evidence, report findings and conclusions, and make recommendations to the Court. The Court sometimes made additional findings, and in any event, made conclusions and imposed discipline pursuant to its summary jurisdiction.⁶

It's hard to know for certain, but public discipline doesn't appear to have been imposed often. According to one early Bar publication, "For nearly fifty years and until after Statehood, the Utah Reports reveal no disciplinary action against a member of the Bar. In the subsequent thirty-one years until the organization of the State Bar, fifteen lawyers appeared before the Supreme Court in connection with charges of unethical conduct, . . ."⁷

The Integrated Bar's Efforts to Establish Procedural Rules for Investigating and Prosecuting Complaints

After the Utah State Bar's integration in 1931, the very first *Utah*

Bar Bulletin, subtitled "Official Organ, The Utah State Bar," published a president's message identifying the means by which the organized Bar would work to eliminate public criticism of the profession, among other things "by enforcing strictly disciplinary rules of conduct among its members."⁸ One of the Commissioners was appointed to prepare and submit rules of conduct and discipline to the Board, and these were adopted by that body and submitted for approval to the Supreme Court.⁹

The Court approved the Rules of Conduct and Discipline of the Utah State Bar in October 1931, and they were published in the *Utah Bar Bulletin* that November.¹⁰ Pursuant to these rules, complaints were filed with the secretary of the Board of Bar Commissioners, who forwarded them to the Commissioner in whose division the respondent attorney last resided.¹¹ The Commissioner had discretion to determine whether the charges justified an inquiry, and if so, to conduct a preliminary investigation and make a recommendation to the Board.¹² If the Board determined that formal action was warranted, it appointed a Committee on Discipline to conduct the hearing.¹³ The Board could also appoint a Prosecuting Committee to present the case to the Committee on Discipline.¹⁴ Volunteer committees were appointed in each district, and their findings and recommendations were made to the Board of Commissioners, which reviewed the cases and in turn made recommendations to the Supreme Court.¹⁵

In January 1932, the Utah State Bar held its first annual meeting, which included reports and addresses similar to those published today in the *Utah Bar Journal*.¹⁶ Among these was the Secretary of the Board's report concerning disciplinary matters. By the next annual meeting, the Secretary's report observed, "Apparently as soon as the laity discovered that there was an organized bar with power and authority to proceed against attorneys for unethical actions, many persons who were unsuccessful in law suits, or who had quarreled with their attorneys[,] filed complaints against them."¹⁷ He noted that only one in ten complaints had merit, and many were "adjusted by calling the matter to the attorney's attention and requesting that he adjust the matter with his former client."¹⁸

KATE A. TOOMEY is Deputy Counsel of the Utah State Bar's Office of Professional Conduct. She has been employed in that office for ten years.

The Transition From an All-Volunteer Disciplinary System

The Board and its committees quickly concluded that the work of investigating disciplinary matters might exceed what volunteer committees could accomplish. By the third annual meeting in 1934, one of the committees recommended using investigators to obtain evidence,¹⁹ and in May of that year, the Board approved the first such paid investigator to assist in a single case.²⁰ Of course, the number of cases for which paid investigators were used increased over time, but they were used on an ad hoc basis.²¹

The Board took another big step in 1936, when it began discussing “securing the services of an attorney to conduct the prosecution of all disciplinary matters and matters pertaining to the unlawful practice of law” because it would permit handling disciplinary matters “with more promptness and dispatch.”²² It appointed a committee to study the question and to propose a resolution for increasing the annual licensing fee to cover the cost.²³ During that year’s annual meeting, the president noted that attorneys sometimes are disinclined to prosecute their colleagues, that the Board occasionally had difficulty finding someone to do it, and endorsed the Board’s plan to hire someone to undertake the prosecutions “whose work will be more efficient and vigorous.”²⁴

The Board had hired a prosecutor by early 1937, one Llewellyn O. Thomas, whose name thereafter appears among the *Utah*

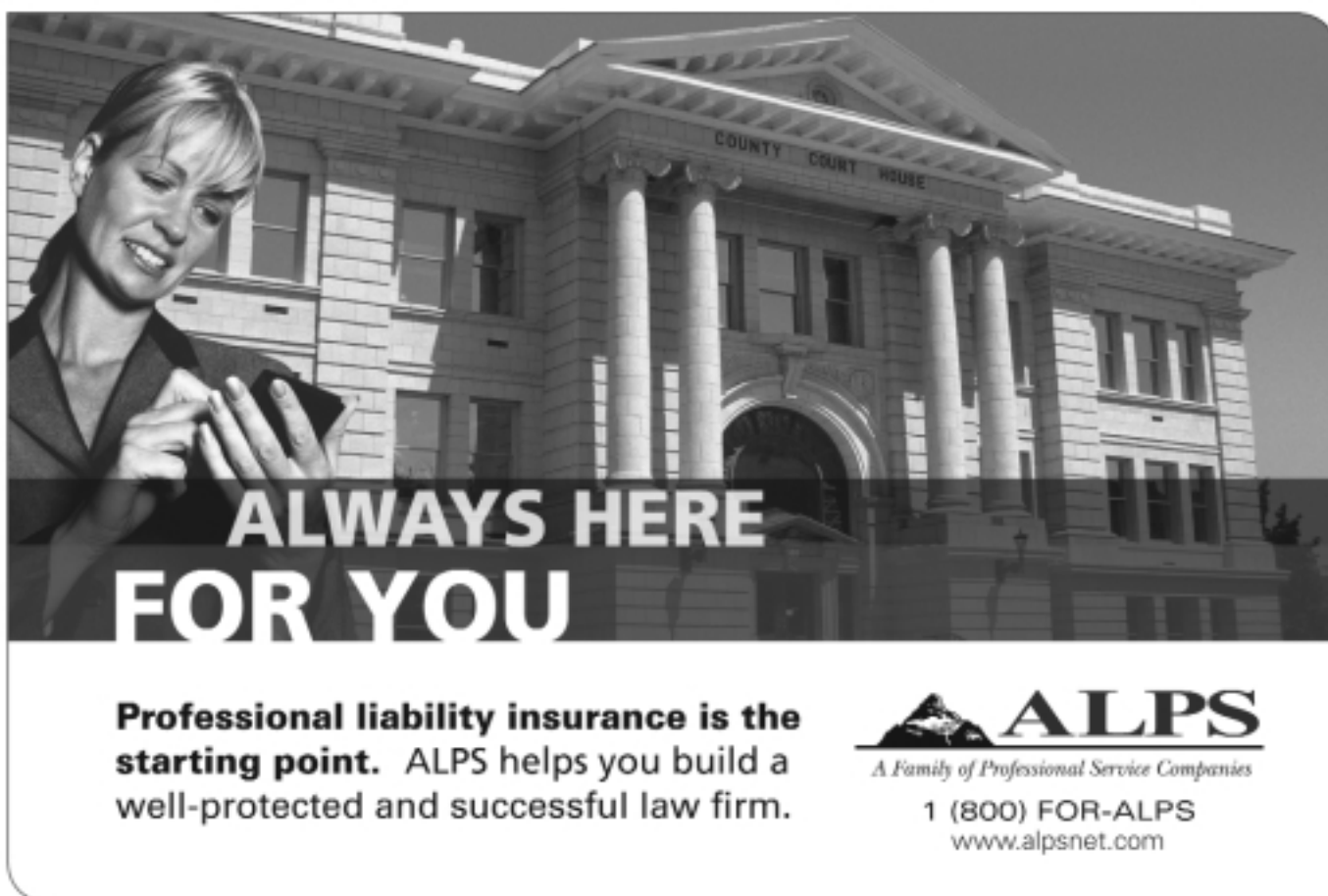
Bar Bulletin’s list of officers and Board of Commissioners.²⁵ Neither the State Bar Act nor the Revised Rules of Discipline of the Utah State Bar formally established this position, however.²⁶ Thomas reported at the next annual meeting on a few disciplinary matters, but most of his report was devoted to unauthorized practice of law issues.²⁷ Thomas’s tenure lasted until his resignation in January 1954, at which point the Board “deferred to a future meeting” the appointment of a successor.²⁸

The Board never hired anyone to replace Thomas; instead, disciplinary investigations and proceedings appear to have been conducted solely by volunteers, with some administrative oversight from the Utah State Bar’s Executive Director, until the late 1970s.²⁹

The Shift to Full-Time Salaried Disciplinary Staff


In 1977, the Utah State Bar hired a full time attorney to serve as Bar Counsel, with duties primarily focused on disciplinary matters, but also including general counsel responsibilities.³⁰ Although there was some support staff for this position, there were no attorneys other than Bar Counsel investigating and prosecuting cases for another decade; by 1987, there were two attorneys, a paralegal, and two half-time secretaries.³¹

Complaints were investigated by Bar Counsel, or that position’s successor, Chief Disciplinary Counsel for the Office of Attorney



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Discipline. Complaints could be sent to a Screening Panel for hearing, and the panels could impose private discipline, or issue a formal complaint. If a formal complaint was issued, the disciplinary office prosecuted the case before a Hearing Panel in a trial-like setting. The Hearing Panel's power was restricted to recommending discipline, in which case the matter proceeded to a hearing before the Board of Bar Commissioners where the disciplinary office also functioned as a prosecutor. The case could be appealed to the Utah Supreme Court.

Another significant development during this period was the move to new offices from the Bar's old offices at 425 East 100 South in Salt Lake City.³² In October 1987, ground was broken for the Law & Justice Center, and the Bar, including Bar Counsel, moved to this address in August 1988. One of the building's purposes was to provide offices for the staff, but also to provide space for disciplinary hearings.³³

The responsibilities of the Chief Disciplinary Counsel were narrowed after a committee charged with reviewing the OAD submitted a written report that among other things recommended separating general counsel duties from those performed by the OAD.³⁴ This included rules drafting, providing legal advice to the Board and its committees, and coordinating defense of litigation against the Bar. The Bar's full-time General Counsel has performed these functions since 1996.

Today's Procedural Structure and the Office of Professional Conduct

The Procedures of Discipline were repealed and replaced with the Rules of Lawyer Discipline and Disability, effective July 1, 1993.³⁵ Thereafter, the Ethics and Discipline Committee could impose private discipline,³⁶ and continued to act as a probable cause determiner, but formal proceedings were brought in district court, with appeals going directly to the Supreme Court. The Board is no longer part of the disciplinary process.

The Office of Attorney Discipline's name was changed to the Office of Professional Conduct in 1997. The Board believed this "more accurately reflect[s] the attempt to balance the practice obligation of helping lawyers understand their ethical obligations and provid[e] them with guidance on how to avoid problems with the need to protect the public and impose attorney discipline where appropriate."³⁷ The Board set new priorities for the office, as well:

The Office of Professional Conduct represents the Utah State Bar in promoting and enforcing the ethical standards of the legal profession by:

Providing general education on ethical responsibilities;

Providing guidance in response to specific requests from Bar members and;

Investigating and resolving or prosecuting complaints equitably and efficiently.³⁸

The OPC now employs six full-time attorneys, three of whom perform the intake functions of screening and investigations; the other three prosecute cases before the Screening Panels and the district court, and, when necessary, represent the OPC in cases appealed to the Supreme Court. Decisions concerning milestone events in a case, such as continued investigation, dismissals, referrals to a panel for hearing, and settlement decisions are made by group consensus at weekly meetings conducted under the supervision of the OPC's Senior Counsel.

AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE

The OPC and its predecessors assume that most attorneys will discharge their professional responsibilities in the manner required by the Rules of Professional Conduct. Consistent with this, the OPC offers a bi-annual day-long ethics school, provides informal guidance to attorneys seeking advice concerning their own contemplated conduct, and provides hours of continuing legal education presentations through the Bar's sections, county bar organizations, and other associations. The OPC's attorneys also regularly contribute articles to the *Utah Bar Journal* that attempt to offer practical information on subjects of what we hope are general interest; many of them are posted on the Bar's website for future reference. All of these activities further the OPC's duty, prescribed in the Rules of Lawyer Discipline and Disability, to "provide informal guidance on issues related to professional conduct to members of the Bar requesting guidance, [and] promote ethical conduct by the Bar."³⁹

Perhaps the most influential, if not the most notorious, educational tool is the Discipline Corner of the *Utah Bar Journal*, which, I am told, is the section readers first turn to when the *Journal* arrives. Publishing disciplinary results is among the OPC's duties,⁴⁰ and its purpose "is not only to alert the bench and bar that a particular lawyer's status has been changed or reaffirmed, but also to help educate others as to potentially problematic conduct."⁴¹

The Board of Bar Commissioners first noted the disposition of a disciplinary matter in November 1931⁴² when it resolved to reprimand an attorney, who was not identified, for retaining a filing fee paid him by the client, and instead filing an affidavit of impecuniosity. The Utah State Bar's first publication of something resembling today's "Discipline Corner" appeared July 1932 under the caption "Disciplinary Matters."⁴³ This merely reflected the Board's resolution, however, not the Supreme Court's decision.⁴⁴ At any rate, by December 1932, the Board had "decided upon surveying the number of groundless complaints filed, to refrain from publishing names or detailed information unless a formal complaint is filed. . . . [T]he only purpose of the 'Bulletin' in reporting these matters at all is to give some idea of the number and general nature of the complaints."⁴⁵

The Discipline Corner, captioned as such, was first published during the mid-1980s in the *Utah Bar Letter*, a monthly newsletter for Bar members.⁴⁶ Although the *Utah Bar Journal* was published during those years, it did not include the Discipline Corner until 1988 when it adopted the format employed today. It continues as a regular feature of the *Journal*.

RECURRING THEMES

Several disciplinary themes have endured and seem likely to continue:

Public Confidence Can Only Be Maintained By Purging Our Ranks of Bad Apples

Lawyers have been the subject of criticism over a period of years. The cause and justification of this criticism can be removed only by the bar purging its own ranks. All members of the bar should lend themselves to this end, whether members of the Commission, Grievance Committee, or otherwise.⁴⁷

Similar views were regularly repeated in the Bar publications reviewed for this article.

Is Professional Discipline Persecution, or Prosecution?

The debate about whether the attorney regulatory system goes too far is as old as the Bar as an institution. Here's an early example, along with the editor's response:

Occasionally the *Bulletin* hears uncomplimentary remarks by certain members of the Bar hinting at "persecutions" of lawyers by the Utah State Bar. The weight to be attached to such remarks can be tested by the fact that before a member of the Utah State Bar may be subjected to a disciplinary order, that order must meet various tests . . .

In other words, the lawyer accused of professional misconduct has a jury of approximately twenty-three of his peers to whom the vindication of the professional integrity of the lawyer charged is highly preferable to the unpleasant and often tragic task of determining that our Bar is subject to human frailties.⁴⁸

Of course, disciplinary complaints today run a different procedural gauntlet, but the cases still receive numerous tests before an attorney can be disciplined: the OPC's initial screening and investigation; a three- or four-member Screening Panel determination and recommendation with review by the Chair of the Ethics and Discipline Committee; or in cases referred to district court by a Screening Panel, a Complaint reviewed and signed by the Chair, a civil trial on the merits under the Rules of Civil Procedure and subject to the Rules of Evidence, with the possibility of appellate review by the Supreme Court. Statistically speaking, only a small proportion of informal complaints and other pieces

of information received by the OPC result in discipline.⁴⁹

The Discipline System Can't and Shouldn't Address Some Aspects of Lawyer Conduct

Under the old system, the Board was reluctant to get in the middle of fee disputes or matters not involving unethical conduct that could best be resolved through a civil action.⁵⁰ Today, the OPC declines to prosecute matters solely involving fee disputes, and also cases involving allegations of malpractice that do not arise to the level of a violation of the Rules of Professional Conduct.

It's a Dirty Job . . . But Someone's Got to Do It

At the Bar's first annual meeting in 1931, the president⁵¹ observed that membership in the profession gave rise to a duty to participate in Bar committees, "however distasteful from personal motives that call may be."⁵² Characterizing the business of discipline as "distasteful" persists today, one member of the Ethics and Discipline Committee even expressing it to me in just that language as I was working on this article. We've also known district court judges who expressed sentiments along the lines that they would prefer presiding over a homicide case than another disciplinary case. I don't know anyone who relishes passing judgment on the conduct of other attorneys. And yet, the work must continue, and it can only continue if everyone is willing to do their part. This is the way it has always been, and in my opinion, this is the way it will continue.

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CONCLUSION

Dramatic changes in the manner in which complaints against attorneys are investigated and prosecuted characterize the Utah State Bar's seventy-five years of institutional life. Things initially done by volunteers are now done by a team of full-time employees. Today, cases requiring adjudication are reviewed by a panel derived from a Supreme Court-appointed committee of volunteers with authority to recommend private admonitions and public reprimands, and the Ethics and Discipline Committee Chair can issue those sanctions. The panels refer more serious cases to the district court for adjudication. The system doesn't always work perfectly, but it works well, thanks to the collective efforts of the many individuals involved.

But much remains the same. No doubt it's difficult being a respondent, and it's certainly a challenge being the adjudicator, whether one is a volunteer member of a panel or a district court judge. The people who have served as prosecutors through the years have been hard working professionals dedicated to furthering the aims of the discipline system. The nature of the allegations hasn't changed, nor has what's at stake for the individual attorneys, the public, and the profession. The OPC will continue its efforts to further the purpose of disciplinary proceedings: ensuring and maintaining the high standard of professional conduct required of lawyers, and protecting the public and the administration of justice.⁵³

1. Melvin C. Harris, *Report of President*, 14 UTAH BAR BULL. 161 (1945).

2. The oldest I've come across was decided in 1886, but refers to an earlier opinion of which nothing remains on file. *See In re McKnight*, 4 Utah 237; 9 P. 299 (1886).

3. *See e.g. In re Disbarment of Evans & Rogers*, 22 Utah 366; 62 P. 913 (1900).

4. Then, as now, complaints came from a variety of sources, including attorneys and non-attorneys, clerks of court, and the grievance committee of the State Bar Association — a predecessor of today's integrated Utah State Bar.

5. In addition to appointing attorneys in private practice to prosecute charges, the Court sometimes appointed the Attorney General as prosecuting attorney. *See e.g. In re Hanson*, 48 Utah 163, 164; 158 P.778 (1916).

6. The Court's jurisdiction is "inherent, continuing, and plenary, and exists independently of statute or rules of equity, and ought to be assumed and exercised as the exigencies and necessity of the case require, not only to maintain and protect the integrity and dignity of the court, to secure obedience to its rules and process, and to rebuke interference with the conduct of its business, but also to control and protect its officers, including attorneys." *In re Evans*, 42 Utah 282, 300; 130 P. 217 (1913).

7. *Six Years of the Utah State Bar*, 7 UTAH BAR BULL. 61 (1937).

8. Dean F. Brayton, *Message from the President*, 1 UTAH BAR BULL. 4 (1931).

9. 1 UTAH BAR BULL. 2, 14 (1931).

10. *See* 1 UTAH BAR BULL. 20 (1931).

11. *See* Rule 3, subsections 5 & 6, R. Disc. Pro., R. Con. and Disc. of the Utah State Bar (1931).

12. *See id.* at subsection 7.

13. *See id.*

14. *See id.*

15. *See e.g. In re McCullough*, 97 Utah 533, 535; 95 P.2d 13 (1939); *see also* 1 UTAH BAR BULL. 15 (1931); Rule 3, subsection 19, R. Disc. Pro., R. Con. and Disc. of the Utah State Bar (1931).

16. *See* 1 *Proceedings of the First Annual Meeting of the Utah State Bar*, 3 (1932).

17. 2 *Proceedings of the Annual Meeting of the Utah State Bar*, 5 (1933).

18. *Id.*

19. 4 UTAH BAR BULL. 22 (1934).

20. 4 UTAH BAR BULL. 86 (1934).

21. *See e.g.* 5 UTAH BAR BULL. 2 (1935); *id.* at 83 (authorizing committee to spend as much as \$30 to pursue investigation).

22. 6 UTAH BAR BULL. 156 (1936).

23. *Id.*

24. 6 Annual Meeting, UTAH BAR BULL. 42 (1936).

25. *Compare* 7 UTAH BAR BULL. 20 (1937) *with* 7 UTAH BAR BULL. 44 (1937).

26. *See* Rev. R. of Disc. of the Utah State Bar (1937).

27. Llewellyn O. Thomas, *Report of the Special Prosecutor*, 8 UTAH BAR BULL. (1938).

28. 24 UTAH BAR BULL. 22 (1954). Thomas continued his Bar service as a member of the Committee on Unauthorized Practice of Law. *See id.*

29. Telephone Interview with Judge Pamela Greenwood, Utah Court of Appeals (May 12, 2006). Judge Greenwood served as the first Bar Counsel from 1977 to 1980. With apologies to anyone I may have overlooked, the other people successively in charge of the office were: Steve Hutchinson, Jeffrey Paoletti, Nicholas Angelides, Jo Carol Nasset-Sale, Christine Burdick, Stephen Trost, and Stephen Cochell. Billy Walker has been Senior Counsel since 1997, a record-setting nine years.

30. *See id.*

31. Reed L. Martineau, *President's Message*, UTAH BAR LETTER at 1 (November 1987).

32. Bar Counsel's office has been described to me as a "shack" or "garage" behind the Bar's building on 100 South.

33. *See The Utah State Bar Law and Justice Center*, UTAH BAR LETTER at 2 (July 1984).

34. Report of the Committee to Review the Office of Attorney Discipline Presented to the Utah State Bar Board of Bar Commissioners, July 27, 1998, at 11-12.

35. *See* Minute Entry, *In re Rules of Lawyer Discipline and Disability, Standards for Imposing Lawyer Sanctions, and Rules of Professional Conduct*, Utah Supreme Court No. 920334.

36. In 2003, the Rules of Lawyer Discipline and Disability were amended to permit the Ethics and Discipline Committee to issue public reprimands. *See* Amendment Notes, Rule 10, RLDD.

37. Petition to Change Titles of Office of Attorney Discipline and Chief Disciplinary Counsel, *In re Utah State Bar*, Dec. 2, 1997.

38. *Id.*

39. Rule 4(b)(13), RLDD.

40. *See id.*

41. *Pendleton v. Utah State Bar*, 2000 UT 96, 16 P.3d 1230, 1232.

42. 1 UTAH BAR BULL. 34 (1931).

43. *See* 2 UTAH BAR BULL. 104 (1932).

44. The Bulletin mentioned this detail the month after it published the first notice of discipline. *See* 2 UTAH BAR BULL. 123 (1932).

45. 2 UTAH BAR BULL. 186 (1932).

46. Telephone interview with Jeffrey Paoletti (May 2006).

47. W.Q. Van Cott, *Annual Address of the President*, 8 UTAH BAR BULL. 14, 15 (1938).

48. 8 UTAH BAR BULL. 64 (1938).

49. *See* OPC's Annual Report to the Utah Supreme Court, posted on the Bar's website, for the most recent statistics.

50. *See* 6 UTAH BAR BULL. 78 (1936).

51. *Id.* at 11.

52. *Id.*

53. *See* Rule 1(a), RLDD.

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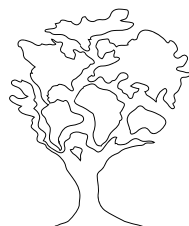
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Utah Minority Bar Association Receives Prestigious Honors – Thanks Utah State Bar and Bar Members for Support

by Cheryl Miyuki Mori

The Utah Minority Bar Association (“UMBA”) congratulates the Utah State Bar on its 75th Anniversary and its enormous achievements during its 75 years. In reflecting on the history of the Utah State Bar, UMBA has had the opportunity to think about its own history. As UMBA was not officially organized until 1991, it has a very short history compared to the Utah State Bar. UMBA has made enormous strides in those years, however, and the Utah State Bar has been a large part of those efforts. The progress of UMBA is clearly evident this year as UMBA has just been recognized with two prestigious honors, one from the Utah State Bar itself and one from the American Bar Association.

First, the Utah State Bar selected UMBA to receive the President’s Award at the Annual Convention held in July 2006. Those of us in UMBA particularly appreciate this recognition as it comes from our peers and colleagues within the State. UMBA’s second honor comes on a national level from the American Bar Association Division for Bar Services. This year, UMBA was chosen as a winner of the 2006 ABA Partnership Award. The award recognizes UMBA’s ongoing diversity programs and was presented to UMBA at the ABA’s Annual Meeting held in Honolulu, Hawaii in August. UMBA was honored to receive this award over strong competition, which included entries from national, state and large metropolitan bar associations. Of course, these two awards are a culmination of many efforts over the years, and the Utah State Bar has been a large part of those efforts.

Minorities in the Bar

Last year, UMBA hosted a one-time historic event called “The First 50: Celebrating Diversity in the Law.” There was a great deal of publicity surrounding the event held last October at the Grand America Hotel. For those who haven’t heard, the “First 50” event was a gala banquet and program held to recognize and honor the first 50 minority attorneys admitted to practice law in Utah. Many in the Bar assisted and supported UMBA in its efforts and over 700 people attended the gala banquet. Everyone who attended noted that the banquet was a huge success.

Through the First 50 effort, UMBA learned much about the history of minority attorneys in Utah. Prior to the Utah State Bar being organized in 1931, there were just two minority attorneys, both African American, who had ever practiced law in Utah. The first,

Lawrence Marsh, was admitted to practice in 1909, but was later disbarred based on the finding that Marsh ran a “house of ill fame” and that “white girls resorted to his said house where they consorted with negroes brought there by him.” (*See In re Marsh*, 42 Utah 186, 129 P. 411 (1913)). Although Marsh categorically denied the allegations and witnesses testified that Marsh merely ran a boarding house, the Supreme Court of Utah cancelled his certificate of admission to the State Bar Association of Utah (the Utah State Bar’s predecessor). In researching the Marsh case, UMBA believes that Marsh may have been disbarred based on racial motivations. UMBA is continuing to look into this and hopes that if it can show this to be the case, there might be the possibility of reinstating Marsh posthumously to the Bar.

After Marsh, minority attorneys in Utah were few and far between. The second minority attorney in Utah, T.S. Grasty, was admitted in 1914 but relocated to Los Angeles, California after just one year of practice in Utah. There were no other minority attorneys admitted until 1931, the same year the Utah State Bar was organized. During that year and until 1946, David H. Oliver, also African American, was the sole minority attorney admitted to practice law in Utah. In 1946, Yoshio Katayama, a Japanese American, was admitted. During all of the 1940s, 1950s, and 1960s, only 8 other minorities were admitted to practice law in Utah. Seven were Japanese American and one was African American. It was not until the 1970s that Utah saw its first Hispanic, Native American, and other Asian and Pacific Islander attorneys. The number of minority attorneys slowly grew, but it was not until 1980 that Utah reached the 50 minority attorney mark.

Although their numbers were small during those years, minority

CHERYL MIYUKI MORI received her J.D. from the University of Utah College of Law in 2000, where she was a Member of the Law Review and graduated Order of the Coif. She clerked for Chief Justice Christine M. Durham from 2000-2001 and is currently a Staff Attorney with the Division of Enforcement of the United States Securities and Exchange Commission. Ms. Mori is the President of the Utah Minority Bar Association.



attorneys still managed to make an impressive mark on the Utah State Bar. Eight of the First 50 became Utah State Court Judges, one is a United States Federal Magistrate, one is a Federal Administrative Law Judge, one is the Chief Justice of the Navajo Nation, and two are practicing law professors (one of whom was the former Undersecretary of the United States Treasury and the other the former Attorney General of Idaho). Some served in government, some started their own practices, some served in the military and some have held elective and appointed offices – both locally and nationally. Many have advocated for the civil rights and legal protections of the disadvantaged; many did a combination of the above. As evidenced by their bios (which can be found on UMBA's website at www.umbalaw.org), regardless of the path they took, all of the First 50 contributed to the legal field and to our community in Utah.

UMBA is Organized

By the late 1980s, the number of practicing attorneys from the generally recognized minority groups (African Americans, Asians, Hispanics, Native Americans, and Pacific Islanders) was still small, but growing. Some of these attorneys began to meet together to discuss ways that lawyers from diverse minority groups could effectively work together to achieve common objectives that were not attainable individually. By 1991, the founding members of UMBA believed the time was right to formally organize UMBA. A small group of about twenty minority attorneys met in October of 1992 at UMBA's first official meeting. UMBA members elected the Honorable Raymond S. Uno in his absence to be UMBA's first president. This proved to be an excellent choice, and Judge Uno vowed to never miss another meeting.

Recently, UMBA learned that it is unique in the nation in that it is a unified organization of diverse minority attorneys. In February 2005, in Salt Lake City, UMBA hosted the first minority lawyer reception at an ABA annual or mid-year meeting. The reception was extremely well received and helped raise awareness at the national level of the importance of working together as a collective group, such as UMBA, to achieve common goals. At that time, the ABA knew of no other bar association that encompassed all minority groups as UMBA does. It is only in recent years that the national bar associations for specific minority groups have joined together to form a coalition, thereby joining separate groups into one whole for the benefit of all.

UMBA's Programs and Partnerships

Throughout its short history, UMBA has worked tirelessly to achieve its goals of diversity in the profession and providing opportunities for minority attorneys and law students, as well as promoting the civil rights and social dignity of minority communities. To accomplish these goals, UMBA has developed a number of programs that are ongoing and that continue to expand each

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year as resources and support grow. UMBA owes a great deal to the Utah State Bar as well as many other individuals, firms, and organizations within the Bar who have supported UMBA's goals and programs. As demonstrated by the ABA Partnership Award, which recognizes partnership efforts with others, UMBA has accomplished much by forming partnerships with Bar and other organizations, law firms, and legal employers, and through the support of organizations, businesses, law firms, and individuals.

UMBA's efforts, along with its partners' efforts, have helped to bring diversity issues to the forefront and have contributed to the advancement of minority lawyers and law students in a number of ways. In 2003, UMBA organized many of the legal employers in Utah to sign a Pledge to Racial and Ethnic Diversity ("Diversity Pledge"). Through the Diversity Pledge, UMBA has increased awareness of the benefits of diversity and also provides information to help legal employers reach diversity goals. Since the Diversity Pledge was initiated, the number of minority partners in large law firms in Salt Lake City has doubled and numbers of minority associates have increased dramatically. UMBA also advocates for diversity on the Bench and in law school. UMBA has spoken about diversity to Judicial Nominating Committees and has partnered with the Women Lawyers of Utah to provide Continuing Legal Education on "How to Become a Judge." The next such CLE will be held at this year's mid-year meeting of the Utah State Bar.

To further its goal of assisting minority law students, UMBA partners with the University of Utah's S.J. Quinney College of Law and Brigham Young University's J. Reuben Clark Law School, as well as with the minority law student organizations at both schools. Through UMBA's Mentor Program, minority law students (many of whom are the first in their families to attend law school or even college) are able to meet and talk with practicing attorneys and judges, who can advise and discuss ways these students can excel in law school and after law school. UMBA members participate on panels so that minority law students can learn about recruiting and interviewing for legal jobs in Utah. UMBA has partnered with

the Salt Lake City office of Holland & Hart, LLP, which sponsors the "Oh, the Places You'll Go" seminar program for minority and women high school and college students interested in law school. Holland & Hart, LLP provides the programming and financing to host the program and reception. UMBA members participate by distributing information about the program and by attending the reception, where they interact directly with students.

At its Annual Scholarship and Awards Banquet, UMBA recognizes members of the Bar and the community who have contributed to promoting diversity and the advancement of minorities in the Bar. The banquet, held in October of each year, also raises money to fund scholarships for minority law students at the University of Utah and Brigham Young University. These scholarships are greatly appreciated by students, many of whom support themselves through law school. Last year, the First 50 event was held in lieu of the annual banquet. There was a huge outpouring of support for the First 50 from many in the Bar, including Parsons Behle & Latimer and Ballard Spahr Andrews & Ingersoll, LLP who acted as underwriter sponsors for the event. This year, Dean Hiram Chodosh, new Dean of the University of Utah S.J. Quinney College of Law will be featured as the keynote speaker.

Of course, much of UMBA's success can also be traced to the commitment of its members. Without its members, UMBA could not have accomplished so much in such a short time. As minorities in the community, many of our members have faced overt barriers and covert discriminations throughout their lives and have persevered and excelled in spite of those obstacles. A common misperception about UMBA, however, is that you must be a minority to be a member. That is not the case. Rather, UMBA welcomes all members of the legal profession who agree with the purposes of the association. Many UMBA members do not belong to a racial minority group, but are nonetheless committed to promoting diversity in the Bar and equal opportunity for all members of our society. Please consider joining UMBA if you agree with these goals.

Founded in 1991, the Utah Minority Bar Association is an organization of Utah lawyers committed to promoting diversity and addressing issues that impact racial and ethnic minorities, especially within the legal community. The Utah Minority Bar Association is open to all members of the Utah State Bar who agree with the purposes of the association. Some of the association's ongoing programs and efforts include: promoting the "Diversity Pledge" – a commitment by members of the Utah legal community to promote diversity in the profession and to expand opportunities for racial and ethnic minority attorneys; awarding scholarships to minority law students in Utah; mentoring minority law students and young minority lawyers; providing networking and professional development opportunities for minority lawyers and law students. Further information about Utah Minority Bar Association can be found at its web site: www.umbalaw.org.

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Women Lawyers of Utah: How it All Started

by Jan Graham

EDITOR'S NOTE: *The following recollection was presented on August 31, 2001 to commemorate the 20th Anniversary of Women Lawyers of Utah. The current leadership of WLU asked for permission to submit this Recollection for this special issue of the Utah Bar Journal).*

I'm delighted to share this recollection on the occasion of the 20th Anniversary of Women Lawyers of Utah. It continues to amaze and warm me to see the growing importance and numbers of WLU, and the excellent diverse paths taken each year with different leadership. Given how things started, it's a miracle! So, take a moment and walk back in time with me to the beginning.

During my second year at the University Of Utah College Of Law, I was President of the Women's Law Caucus – a role I shared with my friend Kate Lahey who was in her third year. The Caucus was a major force at the law school, not only politically, but also socially. As members, we had mentors from the first day who became our sisters – there to help in any way. I can't imagine those stressful but happy days without my "big sisters": Pat Leith, Kate Lahey, Liz Haslam, Kathy Dryer, Judy Billings (also a Caucus President), and many others. The Caucus provided support through shared experience.

Out of law school in the real world of law firms, things were different. After the dreaded interviewing season of second year, I was fortunate to get offers from several firms, but not my first choice: Jones Waldo. I saw that firm as progressive for the times, and as a fledgling Democrat I was bedazzled by the firm's President, Don Holbrook, and the newly acquired former Governor, Cal Rampton. I felt the day of interviews went well, but the offers went to others, all male. I was devastated. I don't know how I got the nerve, but I called the head of the recruiting committee and asked what had gone wrong. He invited me in to talk with him. He showed me the rankings after the interviews and my name was at the top, but there was a question mark by my name. This kind man disclosed that "there were some questions about hiring more women." He asked if I would agree to meet with the firm's President one more time. I said "sure", but my knees were shaking when I walked in his huge and elegant office. He cleared his throat, and asked: "Are you sure you want to be a lawyer? Don't you want to raise a family?" I was single at the time, but I said I felt certain I wanted both. He looked at me for a moment, shook his head, and said in a tone I can only

describe as befuddled resignation: "Alright." I got the offer from the recruiting chief on the way out.

I wasn't angry or humiliated. I didn't feel discriminated against. I was thrilled! I felt like the luckiest person in the world – that this firm would take a chance on me even though they weren't sure about hiring more women. I have thought about this strange "second interview" many times since because the firm President later became a dear friend, political ally, treasured mentor and the best litigator I ever saw in action: Don Holbrook.

I loved Jones Waldo and never regretted choosing the firm. But as I began my career there, I missed the support and camaraderie of the Women's Law Caucus. I had a sense of being left alone to navigate this tricky male bastion by myself. Jones Waldo was progressive for the day, but still decidedly male dominated and wary of what women could and should contribute to the grand practice of law. The few women in the larger firms in Salt Lake were doing family law, estate planning, and just getting in to real estate and banking law. For the most part, women were not litigators. That's what I wanted to do, and the waters looked decidedly uncharted.

Worse than the sense of being alone was the sense among my female peers that it was imperative that we just blend in, that we pretend that gender made no difference: "after all, we're all just lawyers." But the experience of young women was vastly different: the expectations and perceptions were planets apart. The social networking was particularly treacherous. Lunch, dinners, travel, drinks and golf outings with clients: how were women going to move comfortably into this world?

There were some funny but also purely unfair events, like being dropped from a big case because it required travel and the partner "didn't feel it was fair to his wife" to have me flying with him and staying in the same hotel. (Believe me, he was safe.) As I talked with friends in my firm and other firms, I realized we were all

JAN GRAHAM served as a Utah State Bar Commissioner 1990-1992 and as Utah Attorney General 1993-2000. Jan is the only woman elected to state-wide office in Utah's history.



battling the same difficulties. I began to think more about the need for a Women's Law Caucus for practicing lawyers. I spoke to a few women and got mixed responses. We were all a bit lost and worried, but many felt like starting an organization would marginalize us and undermine our credibility, not add to it.

I struck gold when I spoke with Christine Durham, then a Third District Court Judge. I was in awe of Judge (and then Justice) Durham, but I knew her to be an unabashed feminist and she had credibility with no end. She felt it was important to put the idea forward and agreed to put her name on a letter inviting women lawyers to a meeting to discuss the pros and cons of a formal organization.

That first meeting could only be described as raucous. There was great division of opinion about the advisability of forming a "girls only" group. The fears were real. "The men will make fun of us." "We will set ourselves further apart." "We don't want to be women lawyers – we just want to be lawyers." I think it is fair to say that the few women who had been out there longer and were slogging along the best they could were opposed. I recall some women stood up and warned that we would make a grave mistake which would set back the cause of women in the law indefinitely. The next comment I will never forget, from a woman who had been silent: "Maybe you're all having an easy

time of it in your firms, but I am not and I need a place where it is safe to talk about it." That quieted the room. What the whole discussion evidenced was the undeniable truth: our experience was unique to us as women.

Again, Justice Durham was a beacon in the darkness. She suggested trying to proceed with an organizational framework that would be a voluntary group, not a formal section of the bar, which would focus on helping us be better lawyers. That seemed palatable to most. What followed was months of debate, considerable emotion (which approached anger on occasion), and finally Women Lawyers of Utah was born. We didn't want a President, just a five-person team with staggered terms. The first Executive Committee was (now Judge) Pam Greenwood, (now Judge) Diane Wilkins, Judith Wolbach, Ellen Maycock, and myself. We met at Lamb's for breakfast and I'll never forget those meetings: we laughed, cried, schemed, and planned. It was a fantastic beginning of an era.

Women Lawyers of Utah exploded with support and enthusiasm. Our numbers grew faster than we ever could have anticipated. There was always controversy about the mission. Are we a support group? A social group? A political group? A CLE vehicle? A career placement program? The answer to all the above was "Yes."

As the years went on, WLU became a force in the Bar – a force



is pleased to welcome

Jennifer Fraser Parrish, Esq.

to the firm

Ms. Parrish obtained her J.D. with Honors from the University of Texas School of Law in May 2006.

Ms. Parrish also received an M.B.A. from the University of Utah Graduate School of Business in May 2000.

Ms. Parrish is also a Registered Patent Attorney.

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to be reckoned with. I'll never forget the special meeting of the Bar Commission requested by WLU to address gender unfairness in firms, the courts, and the Bar itself. Over 200 women showed up. There was tension and electricity in the air and everyone in the room knew this was no tea party. All the Bar Commissioners were male except the beloved and Honorable Anne Stirba. The Commissioners were all straining to say the right thing. Don Holbrook was a commissioner, and in his sincere desire to express support, he uttered a fateful phrase: "I've always like lady lawyers." The groans and grumbling were not just audible, they created a din. He was stung by the criticism and I felt stung for him. This wonderful gentleman who could not understand why I wanted to be a lawyer, was caught between two worlds: one of which he was king and the other which he was struggling to come to grips with. "They're sure not acting like ladies" I heard him say as he walked, flushed, out of the room.

He got his chance to shine. WLU was one of the organizers of the boycott of the Alta Club in 1984 for its ban of women members. Up to that point, the Alta Club had been "the" spot for power lunches, board meetings, recruiting dinners and the like for most major businesses and law firms. Women were expected to use the side entrance, not the front door. The boycott was at its peak when I was elected to Jones Waldo's board of directors in early 1985. My elation at this unexpected honor was soon clouded with fear. Guess where the monthly board meetings were held?

I was terrified. I did not know what to do. Be a no show at my first board meeting? I decided to write a carefully worded memo to firm President Don Holbrook explaining my moral dilemma

and "seeking his counsel." The next day, the nine members of the board got the same memo I did from our President: "The firm's Board of Directors will not meet at the Alta Club until further notice." I wanted to rush down the hall and hug him but I maintained my composure. I still recall the relief and gratitude . . . and admiration for his courage after being treated badly by the women he now supported.

The Alta Club, under pressure from the boycott and the resulting declining revenues, held a special members meeting to vote on whether to allow women members. Of course, there were no women present, but there were plenty of male friends and supporters who gave us the following description of the meeting: all Hell broke loose. Several old timers threatened to quit, some threatened to sue, some were non-committal and others were impassioned advocates for change. I was told by more than one observer that the most articulate and inspiring vote for change was my beloved Don Holbrook, who was reported to have said: "These women are working awfully hard to be treated fairly, and I think it is high time we invited them in."

We also heard that Sam Arentz, then Alta Club President, told the membership that if women were not allowed, the declining revenues would ultimately close the club. Whatever the reason, moral or expedient, the vote was overwhelmingly in favor of change. The first four women were Genevieve Atwood, DeeDee Corradini, Annette Cumming, and myself (nominated by Don Holbrook and Cal Rampton – how could I lose?)

As an interesting side note, about a year later Hal Christensen, the legendary leader of Snow Christensen & Martineau, was nominated

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by President Bush (the first one) to be Deputy Attorney General under U.S. Attorney General Richard Thornburgh. Hal, a Republican, was widely respected by both parties, and was expected to be a shoe-in. Then, Senator Edward Kennedy's office got wind of the fact that Hal was a member of a private club that excluded women. At the time, this was a deal killer for such nominations. I got a call from an aide to Senator Kennedy inquiring about it. I informed him the Club had changed its policy a year earlier. The aide asked if Hal was supportive of the change. I didn't know, but said I'd try to find out. Several observers recalled Hal standing and saying it was time for the club to allow women. Whew! Hal got the job, one in which he served with great distinction.

WLU continued to be a fulcrum of activity. Though many issues were addressed, in my view the most important and recurring one was the one most fundamental: how to balance the profession with the role of mother. Most women lawyers were moms, and feeling frazzled and fearful of telling our colleagues we needed to be home. Working nine to five was manageable with help from husbands and others, but how could we expect to work evenings and weekends? We feared the "I told you so" from the men who said we could never devote ourselves to the practice of law like they could. The truth is, they were right, and thank goodness. What happened to save the day was that men started to figure out that their families and roles as fathers needed to be more of a priority to strike the right balance. New male recruits were boldly saying "I don't work weekends – weekends are for my kids." Wow! As we all evolved, women felt empowered to honestly disclose their own priorities without fear of being labeled second class lawyers. Being "married to the practice of law" used to be an honor; now it's a sign of one's need to visit a therapist.

Women and men still struggle to do it all, and most of us feel at least some of the time we are botching both jobs. Even so, we have come miles from the day when moms had to make up excuses for heading home to a child with a fever. Years ago, a former female partner of mine at Jones Waldo who had four children told me something I'll never forget. She said if you need to leave early to take care of a sick child, tell your partners you are leaving early to do something they respect: like play golf. It's still funny but still a little sad, too.

WLU has grown from its infancy through a stormy childhood, difficult adolescence, and is now in the graceful and confident time of middle age. No one questions its very reason for existence. No one questions the healthy role it plays in the lives of hundreds of women. No one questions its importance or credibility. Those things are taken for granted now. Enjoy this moment. Reflect on all the good that has come from WLU. By allowing ourselves a shared experience we have made each other better.

Appellate Haiku and Limerick Contest

The Utah State Bar Appellate Practice Section is pleased to announce its first (and maybe last) appellate haiku and limerick contest. All entries should relate to appellate law in some way and be submitted no later than June 1, 2007 by e-mail to tsherman@dkolaw.com or by snail mail to Tawni Anderson Sherman, Dewsnap, King and Olsen, 36 S. State St. #2400, Salt Lake City UT 84111. Winners will be announced with much fanfare and crowned with laurels at the state bar's Annual Convention in July 2007.

A haiku must be three lines, containing five, seven, and five syllables, respectively. Here are two examples:

*No brief is as good
as the one we dream about
after it's over.*



*"Great question, Justice."
"I know, that's why I asked it."
Precious moments lost.*

A limerick consists of five anapestic lines with the rhyme scheme aabba, for example:

*Adequate briefing is easy,
And issue preserving just breezy.
But the death of us all
(How I hate to drop that ball!)
Is that marshaling nonsense – it's sleazy!
(Judge Gregory K. Orme)*

The section will award spectacular first, second, and third prizes, and may award additional prizes in the judges' discretion.

Small Print: Entries must be received by June 1, 2007. By submitting an entry, participants certify that the submitted work is original and further grant the Section a non-exclusive license to the use and publication of their poems at the state bar's annual convention, on the Section's website, in Section promotional materials, in the *Utah Bar Journal*, and in any documentary film based on the contest (even if made by Michael Moore). Only entrants who are members of the Appellate Practice Section or who are Utah court judges are eligible to win. (Not a member? No problem! You can join for a mere \$10. Judges need not be members.) Officers and executive committee members of the Section are not eligible to win but may submit entries for publication and glory. The Section is not responsible for entries lost in cyberspace. Judges have absolute discretion to determine the winning entries and their decisions, inconspicuously enough, are not reviewable in any way, shape, or form. Winning entries will be posted on the Section's website and/or published in the *Utah Bar Journal* sometime after the state bar's annual convention, further ensuring the perpetual fame of the winners and selected other honorees.

Small Claims Court: A Conversation with Scott Sabey and Tim Shea

by Scott Sabey and Tim Shea

Shea: The small claims court is almost as old as the Utah State Bar, so this may be a good time to take a look at an area of the law in which lawyers seldom practice. Not because they are prohibited from doing so, although some states take that approach, but because it's not economically feasible to practice. In 1933 the Utah Legislature created the SMALL CLAIMS COURT.¹ Of course the name had to be in all CAPS in the legislation. All caps lettering is at least more officious, if not more official. Enacted March 9, 1933, and effective 60 days later, the jurisdictional ceiling at the depth of the Great Depression was \$50; the filing fee was \$1. Although both the filing fee and the jurisdictional limit have grown since then, lawyers still contribute most, not as advocates, but from the other side of the bench, as volunteer pro tempore judges.

Sabey: I first applied to become a small claims judge in 1994. I was practicing in Murray at the time, and the senior partner of my firm recommended that I serve. He advised me of the benefits to be gained from serving: getting to know the judges better; seeing how effective – or ineffective – different styles of presentation could be; seeing what resulted from bad – or no – witness preparation; getting more comfortable with the courtroom process and why things worked or didn't work. All of my partners either had served or were serving as small claims judges, and it was expected that firm members would give back to the community through such service. So I filled out an application and sent it in. About a week later, the clerk at the Murray Circuit Court called to ask if I could sit that night as small claims judge. I told her I had no experience, I had no idea what to do, and I hadn't even been to a small claims proceeding to watch. She said, "No problem". In a very soothing tone she told me how easy it was, I would be just fine, and the night clerk would help me through it. That should have been my warning. That first night I had a

plaintiff who was infamous with the clerks. It was baptism by fire – especially when I ruled against him. Two days later I was sitting in the West Valley City court (word of new blood spread quickly between the clerks in the different courts), and the same fellow walked in again. I tried to recuse myself, but for some reason he still wanted me to hear the case.

Shea: The amount recoverable in a small claims action has grown over the years, from \$50 in 1933 to \$7,500 today.² The filing fee has increased as well, from \$1 in 1933 to either \$45 or \$70 (depending on the amount of the claim) today.³ When adjusted for inflation small claims is still a bargain, although both the filing fee and the jurisdictional limit far exceed the inflation rate. General price inflation since 1933 is a mere 1,462%.⁴ The small claims filing fee has climbed at 7,000%, but the amount recoverable has more than doubled that rate. Looked at another way, if a dollar could buy \$50 worth of justice in 1933, that inflated dollar today can buy \$1,500 and change. Still a bargain. Even time is subject to inflation. The original Small Claims Act required a trial within five days after the filing; now it's 45 days.⁵ Small claims are still quick; that's an inflation rate of only 900%.

Sabey: Each city handled its small claims cases differently. Sandy was notorious because it would call a pro tempore judge only twice a year, but on those nights it was not uncommon to sit until 10:00 or 11:00 at night. Murray would often run three courts simultaneously, but would not have enough bailiffs to cover the courthouse. The system lacked continuity in its rulings and its application of the law, but for all of its informality, it provided a good service.

Shea: The original act permitted counterclaims, but had no deadline for them. For a time, the defendant could file a counterclaim as late as two days before the trial, which put the trial off

SCOTT SABEY is a partner at Fabian & Clendenin and is also currently a Bar Commissioner. He has served on a number of committees to reorganize the judge pro tempore system, authored the Judge's Bench Book for the Small Claims Courts, teaches the small claims judges school, and received the Amicus Curiae Award from the Supreme Court in 2005 for his service to small claims.



TIM SHEA is the senior staff attorney at the Administrative Office of the Courts. One of his assignments is managing the judge pro tempore program for small claims.



for at least 10 days.⁶ Now the deadline for a counterclaim is a more reasonable 15 days before the trial, and the trial date stays put.⁷ Although counterclaims have been permitted since the original 1933 act, clerks must have found themselves in need of a counterclaim form because 50 years later the Code was amended to specify the form to use.⁸ Until relatively recently the Legislature specified all of the small claims forms. As bad as formbooks are, they are at least a better vehicle for forms than the Code. The statutory forms were finally repealed in 1991.⁹

Sabey: At that time, a set of rules and procedures for small claims had not yet been promulgated, even though small claims had been filed for many decades. The only procedures were those written on the backs of the forms and whatever handouts clerks in different cities had prepared for the parties and the small claims judges.

Shea: The courts have long provided forms for the parties to use. They, like everything else, have changed over the years, but they remain simple: Who are you? Who are you suing? Why does s/he owe you money? How much? The instructions on the back of each form were once considered the “simplified rules of procedure and evidence” anticipated in the Code.¹⁰ “Insufficient,” said the Supreme Court.¹¹ The Court then adopted the Rules of Small Claims Procedure in 2001. In addition to the paper forms, there is now a substantial presence on the judiciary’s website with

instructions (English and Spanish), forms, statutes, and rules.¹²

Sabey: Chief Justice Richard Howe was approached with suggestions for changes to the system. He appointed a rules committee chaired by Judge Robin Reese to examine each rule and procedure. While small claims had been in place for a long time, no one had made a detailed examination of what should be their unique rules and procedures. Should discovery be allowed? What would that do to a pro se party? Should it be formal or informal discovery? Should the rules of evidence apply? Should a defendant be able to force a small claims plaintiff into a higher court by filing a counterclaim that exceeded the jurisdictional limit of small claims? Should the district court use small claims procedures on appeal? Should the parties be allowed discovery on appeal if it was denied before the original trial?

Peggy Gentles, now trial court executive for the Third District Court, drafted and re-drafted the Rules of Small Claims Procedure, which were adopted by the Utah Supreme Court in 2001 and then re-evaluated after being in place for about two years.

There are still issues to be worked out, like: “How far do you extend non-attorney representation when weighed against the unauthorized practice of law concerns”? And “What is the form for a supersedeas bond”? Now, however, such issues can be addressed in an organized fashion through the Supreme Court’s standing committee on the Rules of Civil Procedure.

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Shea: The subject matter for small claims has always been money damages, but the courts (including justice court and city court) in which small claims were filed could hear any civil action for money (not just small claims), up to their jurisdictional limits, which were different from the small claims limits. When the small claims limit reached the magic \$1,000 mark, justice court monetary jurisdiction was coextensive with small claims.¹³ However, justice court subject matter jurisdiction extended to other case types until 1989.¹⁴ After that year the justice court could hear only small claims cases; before that the justice court could hear any action for money, possession of personal property, enforcement of liens, and landlord-tenant, among others.¹⁵

Sabey: Because of a concern over access to justice for the average citizen, in 2003 the Legislature considered increasing the jurisdictional limit from \$5,000 to \$20,000. The Access to Justice Task Force was formed, chaired by President-elect George Daines, to examine the issue. Representatives and a senator participated on that task force and eventually reached a compromise to increase the jurisdictional limit to \$7,500.

Shea: The nature of the monetary damages does not matter. The action might be in tort or contract or any other claim for monetary damages. The claim might be for general or special or even punitive damages. All are permitted.¹⁶

Sabey: In 2000 the Supreme Court issued its decision on the small claims case of *Kawamoto v. Fratto*. Among other things, that case held that small claims courts could hear claims for any damages that could be reduced to a dollar figure, whether those damages were for a dented bumper or punitive damages for intentional infliction of emotional distress.

Within a couple of weeks of that decision, I had a meeting with the Supreme Court where I cried that the ruling would open the floodgates of litigation. Of course they were not persuaded by my argument, and in the end I was proven wrong. However I felt somewhat vindicated when, just two days after that meeting, I was presiding at a small claims trial and two attorneys, with medical records about eight inches thick and a doctor as an expert witness, came into court to plead their case. I felt compelled to ask the attorneys to approach the bench so I could ask how they could afford to put on such a case in small claims with a \$5,000 limit.

Shea: At the start, the small claims court was a special department of the justice's courts and city courts. The small claims department remained when the circuit court replaced the city court in 1977, and when the circuit courts merged into the district courts in 1991/96. Although denominated for decades in statute as a "court," and still called that in the vernacular, small claims has never been a separate court. Small claims are civil actions for money for which there are simplified procedures. This was recognized by statute in 1997.¹⁷

Sabey: In 1996 the circuit courts were dissolved. One of the problems in doing away with the circuit courts was that the circuit court rules provided that small claims (which were under its jurisdiction) were not courts of record. Of course district courts are courts of record. Since small claims were not specifically addressed in the legislation, moving small claims into district court made them courts of record. That was an unintended consequence that took almost six months to fix.

Shea: Our state constitution gives every litigant the right to appeal.¹⁸ Small claims are no exception. Originally only the defendant could appeal a small claims judgment; the plaintiff could appeal only if the defendant had filed a counterclaim.¹⁹ This changed in 1988 to allow either party to appeal.²⁰ From justice court, a party appealed to the circuit court (now the district court) for a trial de novo. For a short – a very short – time in 1987, a party appealed from the original trial in the circuit court to the new Court of Appeals for review of the record for error, just as in a traditional appeal.²¹ (Although small claims were not courts of record, there was an audio record of small claims trials in circuit court.) That experiment having failed as badly as cold fusion, the system quickly went back to trials de novo.²²

With the higher jurisdictional limit we are seeing more lawyers in small claims cases, but still relatively few. Those who need help in presenting or defending their case have several options. Employees of a party have been able to represent the party since 1961.²³ Written to enable a business, corporate or otherwise, to send the accountant or some other employee to the small claims trial, the law's scope was potentially much broader. Could I, for example, as an individual, hire someone, making them my employee, to represent me in a small claims case? Never raised, the issue is probably moot since just about anyone can now represent just about anyone else in small claims, provided the judge approves and the representative is not paid.²⁴

Sabey: Part of the struggle for the Access to Justice Task Force was balancing the need for greater access to the courts against protecting the public from those only posing as attorneys, "para-attorneys," or notarios and the unauthorized practice of law. Even the legislators pressing for change recognized the problem. The Supreme Court's decision, allowing uncompensated, non-lawyer representation at the judge's discretion, provides sufficient screening to allow for the help of family and friends while blocking those who seek to illegally profit from the court's participants. And, since small claims judges had allowed parents, spouses, or even friends to speak for a party, at least when it was clear that that was the only way to present a coherent case, the amended rule reflects what was a relatively common practice.

Shea: We often equate small claims and judges pro tempore, but the practice of appointing volunteer lawyers to judge small

claims cases was not authorized by statute until 1981,²⁵ and even now judges pro tempore operate in only about a dozen courthouses. Initially, the statute tied the use of judges pro tempore to the need for evening hours. As if regular judges lost their powers after 5:00 p.m. or, like vampires, judges pro tempore could not come out before dark. That standard probably was not difficult to meet, but it was not until 1991 that the Legislature removed the “necessity” of evening hours as a condition for using judges pro tempore.²⁶

The district courts in Second, Third and Fourth Districts use judges pro tempore for their small claims cases. Salt Lake City Justice Court and Washington County Justice Court do so as well. Murray City Justice Court has one judge pro tempore. There is a bit of irony in that judges pro tempore in the justice courts have to be lawyers, while the regularly appointed judges cannot be required to be lawyers, although several are.

Sabey: Diane Cowdrey and Polly Schnaper of the Administrative Office of the Courts have taken up the task of holding small claims judges’ classes in Ogden, Salt Lake, Provo, and St. George, and finding presenters like Pat Christensen, of Parr, Waddoups, Brown, Gee & Loveless, who have the expertise to teach, and are gracious enough to donate time to the effort. Brent Johnson, General Counsel with the AOC, regularly attends those classes and teaches judicial ethics and courtroom demeanor. Tim Shea has created a special web page, just for small claims judges, that contains case law, rules of procedure, forms, a bench book, and a bulletin board for judges to stay in communication with other judges. As a result of all these efforts the continuity of procedures and rulings statewide has substantially increased.

Shea: Many of the attorneys who volunteer to serve as pro tempore judges have done so for many, many years. To those and to those of shorter tenure the judiciary owes an enormous debt of gratitude. About 130 of them, more or less, at any given time. Collectively these lawyers donate thousands of hours every year. Who appears before them? Small claims court is in part a collections court; there’s no doubt of that. In many cases, the small claims affidavit is merely the final dunning letter. There are, however, no claims by assignees.²⁷ Bill collectors buy debts and periodically try to collect them in small claims, but they should be politely pointed towards the regular civil docket of the district court. Run-of-the-mill people still predominate. Minor accidents, bad checks, consumer credit, auto repairs, earnest money agreements; the judge sees it all.

Sabey: In the end, the program flies or dies on the good will and generous contributions of our colleagues in the profession. The frequency and duration of the evenings that judges serve are now shorter, and the process better organized. The clerks are wonderful, hard working and get training specifically for small

claims. They know the rules and procedures better than most judges and are a big help. But all the work of the courts would achieve little without people who, after a hard day of billable hours, are willing to donate a few more hours to provide this invaluable public service.

It is a great opportunity to serve and a forum in which you can learn a great deal while serving. More than once I have sat at trial and watched a style of presentation that, as an advocate, I considered effective, but which, from the judge’s perspective, was a disaster. Much of our daily work may be esoteric, but small claims judging is a very immediate, visceral and real experience. The parties need our help, here and now, on issues that are important to their daily lives. We need your help. Come on in, the water’s fine!

Shea: There have been a lot of changes to small claims law in almost 75 years, but despite all of the changes, one thing has remained the same. The “sole object” of small claims has remained constant: “dispensing speedy justice between the parties.”²⁸

1. Laws of Utah 1933, Chapter 16.
2. Laws 2004, Ch 204.
3. Utah Code §78-7-35.
4. <http://inflationdata.com/inflation/>.
5. Laws 1933, Ch 16, §4; Rule of Small Claims Procedure 4.
6. Laws 1986, Ch 187, §3.
7. Rule of Small Claims Procedure 4.
8. Laws 1983, Ch 77, §2.
9. Laws 1991, Ch 268.
10. Section 78-6-1(7).
11. *Kawamoto v. Fratto*, 2000 UT 6; 994 P.2d 187 ¶¶11-13.
12. <http://www.utcourts.gov/howto/smallclaims/>.
13. Laws 1986, Ch. 187.
14. Laws 1989, Ch 157, §13.
15. §78-5-2(1988).
16. *Kawamoto v. Fratto*, 2000 UT 6; 994 P.2d 187, ¶¶14-17; *Kapetanov v. Small Claims Court*, 659 P.2d 1049, 1051 (Utah 1983).
17. Laws 1997, Ch 215, §19.
18. Const Utah Art VIII, 5.
19. Laws 1933, Ch 16, §9.
20. Laws 1988, Ch 73, §1.
21. Laws 1986, Ch 47, §§75, 76.
22. Laws 1988, Ch 73, §1.
23. Laws 1961, Ch 180, §1.
24. Rule of Small Claims Procedure 13.
25. Laws 1981, Ch. 88.
26. Laws 1991, Ch 268, §43.
27. Laws 1933, Ch 16, §6.
28. Laws 1933, Ch. 16, §8 and Utah Code §78-6-8(1) (2006)

Questions You Might Ask About the History of the Utah Bar Journal

by Randall L. Romrell

NOTE FROM THE AUTHOR: As one of the founders of the Bar Journal and as one who has been actively involved on its editorial board (as principal articles editor, associate editor, or as art/design editor) for 26 of its 33 years I am in a unique position to author this article. My objective is to celebrate the rich history and legacy of the Journal and to underscore its continuing value to the Utah Bar. I express appreciation to Christine Critchley, Bar staff liaison to the Journal, and to Ron Fuller, librarian at the S.J. Quinney Law Library, for their contributions in collecting historical information for this article.

When Did It Begin?

The first issue of the *Utah Bar Journal* was published in June 1973. It was the fulfillment of a personal goal of J. Robert Bullock, then president of the Utah State Bar Association.

Was There a Predecessor Publication?

There were at least two predecessor publications. The immediate predecessor was *The Summation: A Journal of Utah Law*, which was published three times annually by The University of Utah College of Law. It was mailed to all members of the Utah State Bar. *The Summation* began publication in the Fall of 1967 and ended in the Spring of 1973.

Over the course of its publication, substantive articles of interest and relevance to Utah lawyers appeared in *The Summation*, authored by law students, faculty members, judges, and lawyers. Articles in *The Summation* tended to be more practical and less esoteric than articles that appeared in more traditional law reviews. Footnotes, if any, were kept to a minimum.

At some time during the 1972-73 school year, the editors of *The*

Summation were approached about the possibility of transforming *The Summation* into a bar journal. The proposal was received with mixed feelings and opinions, since *The Summation* had provided many law students with an opportunity not only to manage and produce a respected journal, but to author and publish

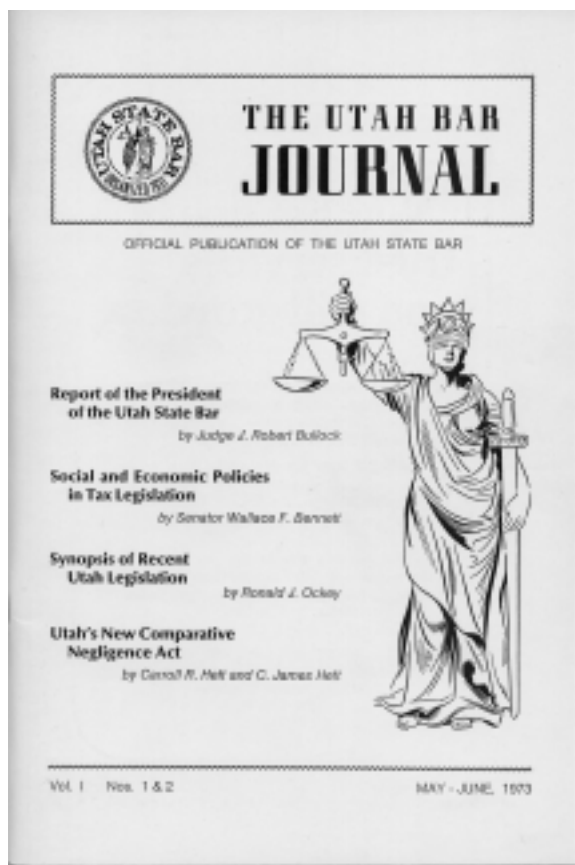
articles that contributed value to practitioners. As discussions progressed the proposal was embraced, with the understanding that law student participation would not only continue, but increase in prominence and value in the new publication.

A task force was then formed and charged with responsibility to create the new journal. Members of the task force included the following: Wallace R. Bennett, associate dean of the law school, D. Ray Owen, a member of the Utah Bar, Dean Sheffield, executive director of the Utah Bar Association, and myself, as the then editor-in-chief of *The Summation*. I undertook a comprehensive study of bar journals from virtually all the other states and wrote a "white paper" that served as a resource and guide for the task force.

The "white paper" identified the strengths and weaknesses noted in

other bar journals, and concluded with the following recommendations for the new journal: maintain a primary focus on the publication of substantive, practical, how-to-do it articles of

RANDALL L. ROMRELL is an ethics and compliance officer for Regence BlueCross BlueShield of Utah, and for The Regence Group which operates in Washington, Oregon, Utah, and Idaho.



The first Utah Bar Journal, published June, 1973.

value to Utah lawyers; minimize the use of footnotes; utilize a moderate amount of appropriate advertising to defray expenses; in addition to feature articles, utilize a “letters to the editor” section, and regular features (including point and counter-point articles) and departments (such as a report of disciplinary actions) to stimulate interest and promote usefulness; avoid news type articles and photographs as well as reports of meetings; publish in an 8-1/2 inch by 11 inch format (the same as *The Summation*) and use at least two colors on the cover; continue to prominently involve law school students on the editorial board and in writing articles for publication. Eventually all of those recommendations were implemented and continue in the current *Bar Journal*, with the exception of law school participation on the editorial board.

Another predecessor to the *Utah Bar Journal* was the “old *Bar Bulletin*” as it is often referred to by bar members who remember it. The *Bar Bulletin* began publication in October 1931 and ended in 1963, a span of 32 years. The purposes of the *Bar Bulletin* were outlined in its initial issue as follows:

“To provide an economical means of communication between the Bar Commission and members, to inform the legal profession of the progress of the State Bar, to encourage discussion and interest in legal problems, particularly as related to our own state, are among the purposes for the publication of the *Bulletin*.”

Editors of the *Utah Bar Bulletin* over the years were Calvin Behle, Wood R. Worsley, D. Ray Owen, Jr., and Dean Sheffield.

What Were the Purposes of the *Utah Bar Journal*?

In his “Greetings to The *Utah Bar Journal*” in the initial issue, President Bullock had the following to say:

“I, personally, am convinced that a medium of regular communication among members of the Bar with respect to matters of pointed interest and concern to the legal profession in Utah is essential to a strong and effective Bar. The *Utah Bar Journal* should prove to be that communication medium, and the Utah State Bar, both as individual lawyers and judges as well as an organization, will benefit greatly....

“The Bar is most grateful to you [speaking to the task force and initial *Bar Journal* staff] for the uncountable hours which you have expended, not only in putting together this first issue, but for your patient perseverance in solving the myriad of problems involved in whether, how, and when a *Utah Bar Journal* might again become a reality. ... The decision to again publish a bar journal on a regular basis grew out of meetings held over a period of several months between the Law School Advisory Committee of the Bar Commission and the faculty and law students then involved in publication of *The Summation* at the University

of Utah College of Law. Publication of *The Summation* has now been suspended, and some of the features of that publication have been and will be incorporated in the *Journal*.

“In the publication of this issue the services of some University of Utah law school students have been extensively utilized, and it will be the policy of the *Journal*’s editorial board, insofar as practicable, in the future to involve law school students in the business, editing, and printing aspects of the *Journal* as well as in article authorship. It is expected that BYU law school students will eventually participate and become involved on the same basis with those of the University of Utah, and that a mutually beneficial and improved rapport between the practicing bar and law school students can and will be fostered.”

After undergoing major changes in 1988 the *Journal* restated its purpose as being “the communications vehicle of the State Bar, designed to:”

“present practical, informative articles on the law, legal history and people; advise of rule changes, legislation of interest to lawyers and recent court decisions; apprise of general State Bar happenings and section and committee news and reports; and provide a forum for exchange of opinions and discussion of views.”

Who Served as the First Editor-in-Chief?

D. Ray Owen was tapped to be the first editor-in-chief. He served until 1987. Under his leadership the *Journal* established its roots and gained the respect and appreciation of the Bar. Mr. Owen welcomed the participation of an associate editor and other student editors from the University of Utah Law School and, beginning in 1976, from the J. Reuben Clark Law School at Brigham Young University. Law school participation on the

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Construction Trades & Equipment Accidents; Tractor, Implement, Harvester & Grain Storage; Chemicals: Pesticides, Herbicides, Fungicides

James M. Miller, PE, PhD
Bradley T. Cook, PE, BSME

Our 12 other staff represent professional degrees in mechanical, agricultural, chemical, human factors, ergonomics, packaging, law and psychology.

editorial board remained strong until 1977 when participation from the University of Utah ceased. Participation from the J. Reuben Clark Law School continued until 1985. During Mr. Owen's term as editor the *Journal* was published in a 5-1/2 inch by 8-1/2 inch format, resembling the old *Bar Bulletin*.

Who Else Has Served As Editor-in-Chief?

Calvin E. Thorpe was appointed editor-in-chief in 1988. He served until his accidental death in March, 1999. Under Mr. Thorpe's leadership the *Journal* took on a whole new look and feel, moving to an attractive 8-1/2 inch by 11 inch format, new layout, new full color cover design (featuring photographs of Utah scenes taken by members of the Utah Bar – the selection of which this author has enjoyed coordinating since that time), and an entirely new direction in terms of articles, departments, and features. The *Journal* staff also increased dramatically in size to involve many more talented individuals. (See article entitled "In Memory of Calvin E. ("Cal") Thorpe 1938-1999, March 1999 issue, for additional insights into this period in the *Journal's* history.) This "new" *Journal* replaced and consolidated into one the former Utah Bar Letter, Utah Bar CLE, and the *Barrister* (published by the Young Lawyers Section of the Bar).

William D. Holyoak was appointed editor-in-chief in 1999, after serving in various capacities on the *Bar Journal* committee since the mid-1980s. The *Journal* has continued to grow and flourish under his leadership. The majority of articles published in the *Journal* are received from their authors without the necessity of solicitation. This achievement speaks highly of the status and respect achieved by the *Journal*. Additional improvements have

been made to the appearance of the *Journal*, as well as to the quality and consistency of publication standards. The *Journal* has also been installed on the Bar's website in an attractive and useful manner.

What do the Bar Members Think of the *Journal*?

Sometime in the 1990s the Utah Bar and the *Bar Journal* partnered with the marketing department in the business school at BYU to

survey the members of the Bar about how the fees they pay should be allocated across recurring Bar expenses. One or more of the questions were designed to determine what programs or expenses Bar members would be willing to eliminate or reduce in order to save expenses. The *Bar Journal* was one of the options offered for reduction.

On that occasion members of the Bar overwhelmingly opposed a reduction in the number of issues or quality of the *Bar Journal* because it was one of the tangible items they regularly received from the Bar that contributed significant, direct value to their practice. Based on the survey results no

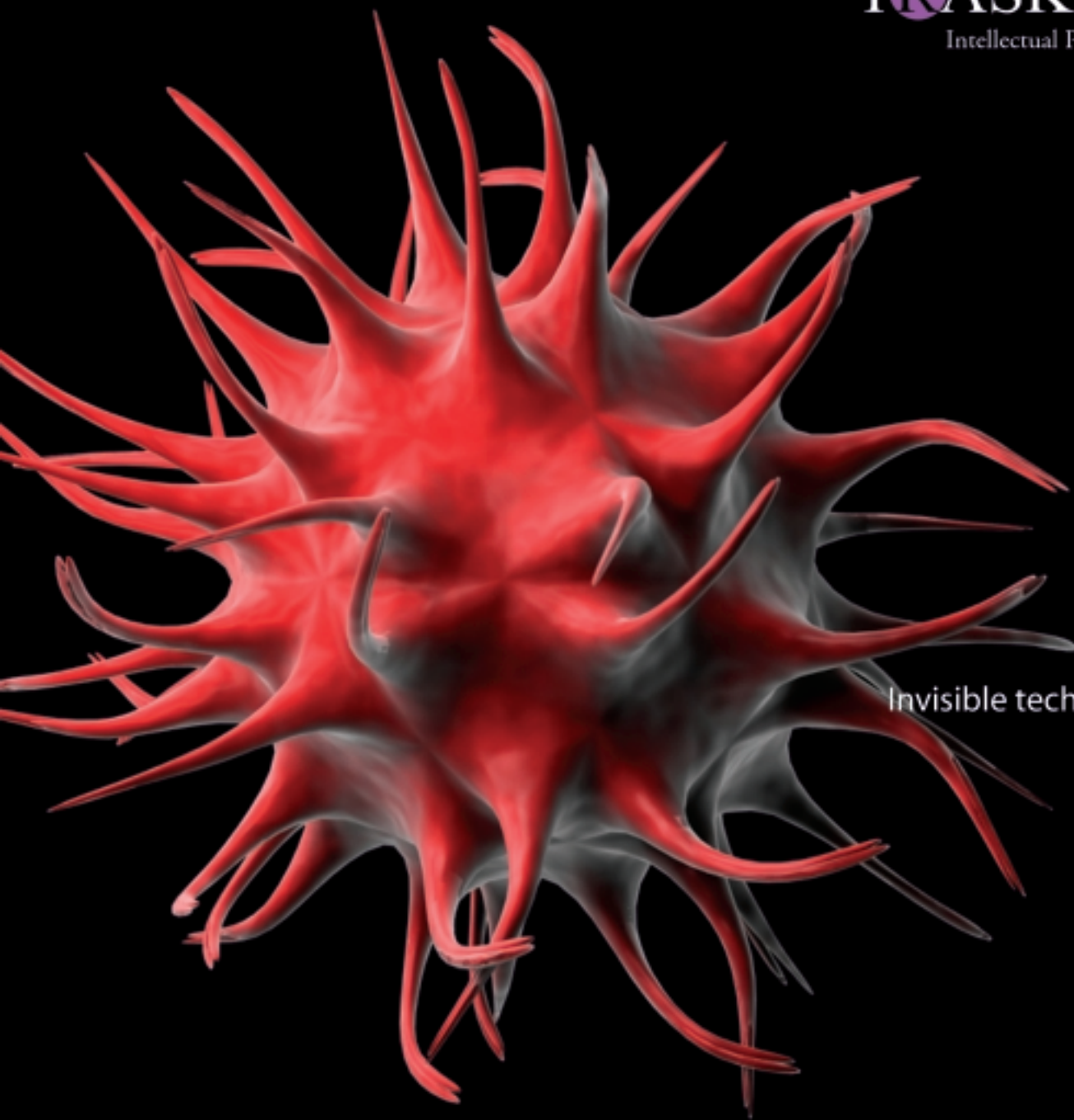
reductions were made to the *Bar Journal* and it continued to publish 10 issues a year, a frequency that continued from 1989 through 2000 when it was reduced by one issue.¹

No similar surveys have been conducted recently, but the editorial board always welcomes feedback from members of the Bar.

1. In the past two years the number of issues per year has been reduced to six, as a result of the increase in Internet use and email as Bar communications tools.



The first Utah Bar Journal published in it's current form, Aug/Sep 1988.



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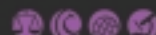
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The Utah State Bar Presents Lifetime Achievement Awards at 75th Anniversary Celebration Dinner

At the Utah State Bar's 75th Anniversary dinner on September 21, 2006, the Bar Commission honored six esteemed attorneys with lifetime achievement awards. These awards were given in grateful recognition of a distinguished career in the law and for many years of leadership, loyalty, contributions and devotion to the programs, services and activities of the Utah State Bar.

HAROLD G. CHRISTENSEN



Harold G. Christensen received his *Juris Doctor* from the University of Michigan after earning his A. B. degree from the University of Utah. He was Assistant Editor of the *Michigan Law Review* and is an honorary member of the Order of the Coif.

Mr. Christensen was Chairman of the Board of Snow Christensen & Martineau, which he first joined in 1953 and recently rejoined the firm as *Of Counsel*.

Harold Christensen served as Deputy Attorney General of the United States from June 1, 1988 until June 1, 1989 during both the Reagan and Bush administrations.

After leaving the Department of Justice, Mr. Christensen was Visiting Professor of Law at the University of Utah College of Law, and Visiting Professor of Law at Hastings College of the University of California at San Francisco. He then served as Chief of the Litigation Division of the Office of Utah Attorney General.

Mr. Christensen is a former Utah State Bar President; Chairman, American College of Trial Lawyers; Charter President, American Inn of Court I; National Trustee, American Inns of Court Foundation; Trustee, University of Utah School Alumni Association and is a member of the Large Complex Commercial Panel of the American Arbitration Association.

He chaired the committees which drafted the "Rules of Civil Practice for the District of Utah" and "Appellate Advocacy Handbook for the Utah Supreme Court." He also chaired the committee on Election of the President of the Utah State Bar, the U. S. Judicial Selection Commission, and the Governor's Utility Regulation Study Committee.

Mr. Christensen chaired the State Transition Team coordinating the consolidation of the Utah trial courts and served on the Task

Force spearheading the construction of the Scott M. Matheson Courthouse. He received the Award for Exceptional Service to the Legal Profession, Utah State Bar, Lawyer of the Year Award in 1984, and the Utah Judicial Council's Amicus Curiae Award. He is listed in *Who's Who in the World* and in *The Best Lawyers in America*.

RAY R. CHRISTENSEN



Ray R. Christensen graduated from the University of Utah School of Law in 1944. He was law clerk to Justice Wolfe, Utah Supreme Court (1947-1948). He was a cofounder of the law firm of Moreton, Christensen & Christensen, formed in 1949 and commenced practice of the law in the state of Utah at that time, and has continued ever since. The name of Moreton, Christensen & Christensen was changed to Christensen & Jensen in 1962. The firm has continued since that time with various intermittent name changes, but always with the names of Christensen and Jensen. Mr. Christensen started in general practice, but soon pursued primarily casualty defense, including products liability, professional liability, aviation accident law, automobile accidents, construction accidents, and general insurance law.

He is a former Utah State Bar Commissioner and President; Member, Litigation Section; Member, Senior Lawyers Division; Member, Salt Lake County Bar Association; Member and Former President, Western States Bar Conference; Member, American Bar Association where he served on the Council of Junior Bar Conference, House of Delegates and the Conference of Bar Presidents.

Mr. Christensen was a Fellow of the American College of Trial Lawyers; Fellow of the International Academy of Trial Lawyers; Member, Federation of Defense and Corporate Counsel; Charter Member and Past President of the American Inn of Court I.

Mr. Christensen has received the Utah Lawyer of the Year Award (1981); Utah Trial Lawyer of the Year (1993) and was honored by the Federal Bar Association, Utah Chapter in 2005. He is listed in *Who's Who in America*; *Who's Who in the West*; *Who's Who in the Law*; *Who's Who in the World*; and, *The Best Lawyers in America*.

He was a Bar Commissioner (1963-1966) and President of the Bar (1965-1966) as well as President of the Western States Bar Conference (1969-1970); participated in the American Bar Association's Council of Junior Bar Conference (1952-1956), and was a member of the House of Delegates (1966-1968 and 1973-1979), and Conference of Bar Presidents. He is a Fellow of the American College of Trail Lawyers.

JAMES E. FAUST



Elder James E. Faust was born in Delta, Utah and attended school in the Granite School District. He enrolled at the University of Utah in 1937, where he participated as a member of the track team and ran the quarter-mile and mile relay. His college career was interrupted first to serve as a missionary in Brazil and later by World

War II, during which he served in the U.S. Army Air Force and was discharged as a first lieutenant. In 1945, he re-entered the University of Utah from which he graduated in 1948 with a B. A. and a *Juris Doctor* degree.

Elder Faust served as a member of the Utah Legislature from 1949 to 1951 and as an advisor to the *American Bar Journal*. He was president of the Utah State Bar in 1962-1963 and received the Distinguished Lawyer Emeritus Award from the Bar in 1995.

In August 1997, he received an Honorary Doctors Degree of Christian Service from Brigham Young University, was honored as a Distinguished Alumni at the University of Utah, and was awarded the Honorary Order of the Coif at Brigham Young University. He was given the Marion G. Romney Distinguished Service Award by the J. Reuben Clark Law School, and he was awarded an Honorary Doctors of Law degree by the University of Utah, S. J. Quinney College of Law.

He also served as a member of the American College Probate Council, as well as the Utah State Constitutional Review Commission.

Elder Faust was set apart as the Second Counselor in the First Presidency of The Church of Jesus Christ of Latter-day Saints on March 12, 1995. He had served in the Council of the Twelve Apostles since September of 1978. He had previously served four years as an Assistant to the Twelve and was sustained as a member of the Presidency of the First Quorum of the Seventy on October 1, 1976.

In 1998, President Faust received a Brazilian national citizenship award — an honor given to only a select few leaders — and was awarded honorary citizenship of the city of Sao Paulo.

BRUCE S. JENKINS



Bruce S. Jenkins was born in Salt Lake City, Utah where he attended public schools. He received his Bachelor of Arts and *Juris Doctor* degree from the University of Utah, where he was a member of the Board of Editors for the *Utah Law Review* and was later elevated to the Order of the Coif in 1975.

He served as a Research Clerk for a member of the Utah Supreme Court and as an Assistant Attorney General and a Deputy Prosecutor for Salt Lake County. He also engaged in private law practice.

Judge Jenkins was appointed to the Utah State Senate and was twice re-elected. He was the Minority Leader and President of the Utah State Senate. While president of the Senate, significant legislation was passed (29 of 33 platform measures), the Senate started on time, ended on time, and the budget was balanced. He was a member of the Legislative Council.

He was a Bankruptcy Judge, United States District Court, District of Utah and served as a United States District Judge. He became a Chief Judge, December 20, 1984. During his tenure as Chief Judge, the Court twice compiled, revised and published local rules; automated and computerized the court's administrative functions; reorganized the clerk's office and probation department and began and completed a major remodeling of the Federal Courthouse in Salt Lake City. The size of the court expanded from two to five active judges. Now a United States Senior District Judge, he has continued to carry a significant case load, has tried cases in other Federal Districts, and by invitation sat on the Court of Appeals, 10th Circuit and the Court of Appeals, 9th Circuit.

Judge Jenkins was named "Alumnus of the Year" by the University of Utah College of Law Alumni Association; honored as Judge of the Year by the Utah State Bar; presented with Distinguished Judicial Service Award by the Federal Bar Association, Utah Chapter. He has been honored by Resolution of the Utah State Bar for his superior service to the bench, Bar and public and awarded the George Washington Medal by the Freedoms Foundation at Valley Forge, Utah Chapter. He was further honored by the Utah Bar Foundation "For Dedicated Service to the People of Utah and the Federal Judiciary."

JAMES B. LEE



James B. Lee was born in Price, Utah, son of J. Bracken and Margaret Lee. He graduated from Carbon County High School and the United States Military Academy at West Point. He received his *Juris Doctor* from George Washington University Law School. He currently practices law at Parsons Behle & Latimer where he was firm President

from 1979-1993.

Mr. Lee has served as President of the Utah State Bar; President, Salt Lake County Bar; President, Utah National Guard Association; Board of Trustees, Rocky Mountain Mineral Law Foundation; Member, Utah State Bar Commission; Chairman of the Board, Salt Lake County Bar Legal Services; Chairman, Board of Directors, Utah Legal Services; Chairman, Board of Family Service Counseling Center; Board of Pardons; Rowland Hall-St. Mark's Board of Trustees; President, Utah Mining Association; Board of Directors of Central Utah Water Conservancy District; Supreme Court Judicial Nominating Commission; Governor's Commission on Tax Recodification.

Mr. Lee has been Chairman, Utah Supreme Court Advisory Committee on Rules of Evidence; Member and President, Board of Directors of Utah Foundation; Vice Chairman of the Commission on Justice in the 21st Century; Member, Board of Governors of the Salt Lake Area Chamber of Commerce; Member and Vice Chair, State Executive and Judicial Compensation Commission; Member and President, Utah Bar Foundation; Member and Vice Chair, Board of Directors of the Legal Aid Society of Salt Lake; Access to Justice Task Force; Chairman, KUED Board of Trustees; Board of Utah Taxpayers Association; Utah Delegate to the American Bar Association House of Delegates; Fellow of the American Bar Foundation; Chair, Ethics and Discipline Committee of the Utah Supreme Court; Board of Governors of the American Bar Association; and on the Executive Committee of ABA Board of Governors.

Mr. Lee retired in 1983 as a Brigadier General after 31 years of military service. He received the *Amicus Curiae* award from the Utah Judicial Council in 1982 and received the Utah State Bar Lawyer of the Year Award in 1988.

In 1996, Mr. Lee received the Utah Bar Foundation Achievement Award and the Utah State Bar Distinguished Service Award. Mr. Lee also was the recipient of the 1998 Dorothy Merrill Brothers Award from the Bar. He was listed in *The Best Lawyers in America* from 1987-2006.

STEPHEN B. NEBEKER



Stephen B. Nebeker graduated from the University of Utah Law School where he was a member of the Board of Editors of the *University of Utah Law Review*. He served in U.S. Army in the M.P. Corps from 1955-1957 then joined the law firm of Ray Quinney & Nebeker where he has been a trial lawyer for 43 years, specializing in insurance defense, product liability and insurance coverage matters. He retired from active trial work in 2000 and is now involved in mediation and arbitration.

Mr. Nebeker is a member of the American College of Trial Lawyers (Regent 1983-1987), the American Board of Trial Advocates, International Association of Insurance Defense Counsel and the Federation of Insurance Counsel.

He also was a Utah State Bar Examiner (1976-1980); Chairman, Utah State Bar Litigation Section (1979-1980); Member, Advisory Committee on Utah Rules of Appellate Procedure (1982-1986); Member, Rules of Evidence Committee (1977-1983); Supreme Court Nominating Committee (1983-1986); President, American Inn of Court II (1982-1983); Member, Post-Law School Training Committee (1985-1987); Utah Appellate Court Nominating Committee (1986); Member, Advisory Committee on Utah Rules of Civil Procedure (1982-1986); Member, Board of Directors, Utah Bar Foundation (1988-1995); Former Member, Board of Directors, Legal Aid Society; Member, Third Judicial District Nomination Commission; and Chair, Utah Supreme Court Task Force Committee on Bar Governance Issues (1999).

Mr. Nebeker is a member of the Board of Directors of the S. J. and Jessie E. Quinney Foundation. He was a member of the Board of Governors Salt Lake Area Chamber of Commerce from 1986-1989 as well as University of Utah Law School Alumnus of the Year in 1988. He was selected as Utah State Bar Lawyer of the Year in 1986 and named as Trial Lawyer of the Year in 1994 and as Utah Defense Lawyers Association Trial Lawyer of the Year in 1998.

Mr. Nebeker is a member and President of the University of Utah Alumni Association Board; Trustee and President, University of Utah Law School Alumni; and a recipient of the University of Utah Distinguished Alumnus Award in 1992.

The Young Lawyers of the Utah State Bar

by John A. Adams

For the past quarter-century, the Young Lawyers of the Utah State Bar have always been at the forefront of innovative, service-oriented programs and have been a fertile training ground for future leaders of the Bar. Because of their unabashed enthusiasm and willingness to pitch in, the Young Lawyers have brought a “Midas touch” to almost every endeavor they have undertaken. Both past and present Young Lawyers speak with fondness of what they have helped accomplish and the friends and acquaintances they have made in being part of the effort.¹

The exact year the Young Lawyers Section of the Utah State Bar was formed is uncertain. Colin King served as president in 1983-84, but he remembers that he was not the first president of the Section. He is reasonably sure that one or two others preceded him. If he is right, then the Young Lawyers may well be celebrating their 25th anniversary this year. In the years Colin, Cecelia Espenosa and John Adams served as president, the Section leadership consisted mainly of the Section officers serving as part of a small executive committee. Paul Durham and those who followed him (Stuart Hinckley and Jerry Fenn) were primarily responsible for creating a larger executive committee and fully functioning committees.

Paul Durham included the following information in his President's Report in the September/October 1986 edition of the Section's publication, *The Barrister*:

The Young Lawyers Section of the Utah State Bar is alive and kicking! Three years ago it was languishing at death's door with only four officers and minimal programming. Today it has four officers and a nineteen-person Executive Council with fourteen fully staffed committees addressing concerns such as bridging the gap between law school and law practice, child advocacy, the Bicentennial of the U.S. Constitution and the needs of the elderly, to name a few.

At the Annual meeting of the ABA in New York City last month, I was privileged to receive, on behalf of the Section, two First Place Awards in the ABA Young Lawyers Award of

Achievement Competition. These awards represent national recognition of the outstanding programs and community service provided by the Section during the past year. . . .

The Section received the First Place Award in the Single Project category for its Lawyers Compensation Survey Project. . . . The Section also received the First Place Award in the “Comprehensive” category, which covers all of the projects undertaken by the Section during the 1985-1986 year. These include the Meet-A-Lawyer Project, the Library Lecture Series, the presentation of the Liberty Bell Award, the Sub-for-Santa Project, the Blood Donor Drive, the Child Advocacy Project, the High School Speakers Bureau, the Mock Trial Competition, the Bridge-the-Gap Project, the Brown Bag Lecture Series, the preparation of a Long-Range Plan for the Section, the Lawyers Compensation Survey, the By-Laws Revision Project, the Outstanding Young Lawyer Award, the *Barrister*, and the Rocky Mountain Outreach Project.

In addition to organizational changes, the Section became poised to wield real influence when all Young Lawyers (defined as those members under 36 years of age or anyone who has been in practice less than three years) automatically became members of the section. This change alone swelled the membership ranks from hundreds to approaching a couple of thousand. With increasing numbers has come increasing influence within the Bar. In 1990, the Bar Commission, recognizing the valuable projects and initiatives being undertaken by the Young Lawyers, raised the Section's budget from \$5,000 to \$25,000. The Young Lawyers Section became the Young Lawyers Division in May of 1993. A section generally raises its own funds through dues,

JOHN A. ADAMS is a shareholder of Ray Quinney & Nebeker in the Firm's litigation section. Mr. Adams is also a past president of the Utah State Bar and the Young Lawyer Division.



whereas a division has the advantage of a line item budget from the Bar itself. Gaining the status of a division brought increased continuity of the Young Lawyers' programs and functions, and ensured that Young Lawyers would be a permanent fixture within the Bar at large.

The Young Lawyers have been a fruitful training ground for future leaders of the Bar. The president of the Division has historically served as an ex-officio member of the Board of Bar Commissioners. Charlotte Miller was Young Lawyers president in 1991-92 and was the second woman to serve as President of the Utah State Bar (1997-98). John Adams served as Bar President in 2002-03. Three former Young Lawyers presidents currently serve as Bar Commissioners (Nathan Alder, Steve Owens and Christian Clinger).

Not only have Young Lawyers presidents made their influence felt within the State Bar, but Marty Olsen (1995-96) became heavily involved in the Young Lawyers Division of the American Bar Association. From 2000-03 Marty served as the Young Lawyers Division Representative to the ABA's Board of Governors. Only five Utahns (George H. Smith, General Franklin Riter, Calvin Behle, Judge J. Thomas Greene and James B. Lee) have served as members of the ABA's Board of Governors. It was a rare distinction for our state, and for the Bar, to have both James Lee and Marty Olsen affiliated with the ABA Board of Governors at the same time.

The real strength of the Young Lawyers Division, however, is the many members who cannot be named here who over the years have provided the energy and commitment to staff the programs, initiatives and service projects of the Division. No other section of the Bar has been as innovative and persistent in its programs as the Division. The Bar Commission has four times (1989, 1997, 2002 and 2004) honored the Division with its annual outstanding section/division award.

The Young Lawyers have been the heart and soul of the Tuesday Night Bar program since May of 1988. Steve Owens considers Tuesday Night Bar "the single most important Bar program to directly help the public." Tuesday Night Bar is a free legal clinic that is sponsored, organized and staffed largely by the Young Lawyers. Tuesday Night Bar is held most Tuesdays of the month at the Law and Justice Center. Individuals that attend the clinic receive a free one-on-one consultation with a volunteer attorney. Approximately 45 to 50 appointments are scheduled for each Tuesday Night Bar.

In connection with the Bar's 1996 Annual Meeting at Sun Valley, the

Young Lawyers introduced and staffed an immediately popular Kid's Fair as part of the barbecue/picnic. The Kid's Fair has become a mainstay of that annual event. Having attended a number of other states' annual meetings, I have seen nothing comparable. Bar leaders from other states who have attended our annual meetings as guests routinely comment on the distinctive "family atmosphere" at the picnic. Although the Young Lawyers took a brief break from organizing the Kid's Fair this year at Newport Beach (due to the fact that Disneyland, the most famous "kid's fair" in the world, was so close by) it will return as part of the upcoming annual convention in Sun Valley, Idaho.

In 2004 the Division was a major sponsor of the 50th anniversary celebration of *Brown v. Board of Education*. Under Christian Clinger's leadership, the Young Lawyers participated in elementary classroom discussions, a statewide film festival, the Law Day dinner with ABA President Robert Grey, Jr., and the Jackie Robinson Appreciation Weekend. Not to be forgotten is the Young Lawyers' longstanding role in promoting Law Day, the Law Day Run, and "And Justice For All."

In addition to legal education and community awareness programs, the Young Lawyers have also focused on making a difference for individuals and children. The Young Lawyers for a number of years have sponsored "Law Suit Day"-where they gather lightly-used professional clothing for young people needing assistance as they enter the business world. Three past presidents listed the Young Lawyers' partnership with, and the hands-on re-landscaping of the Children's Justice Center as one of the most memorable and meaningful projects. Charlotte Miller recalled the Young Lawyers' participation with the Salt Lake County Bar Association to bring about the Pro Bono Domestic Violence Project as a significant initiative.

Always seeking to expand its programs, the Young Lawyers are currently developing a new program, tentatively named "On Demand Mentor", for its website. Attorneys will be able to choose from a variety of legal topics on the website, click a button, and view a short video presentation by an experienced attorney or judge on that topic (e.g., rules of evidence, courtroom etiquette, brief writing, etc...). Filming has already begun and the Young Lawyers hope to begin making the tutorials available on its website by the end of the year.

1. This article represents a compilation of information from a number of past presidents of the Young Lawyers as well as from Richard Dibblee and the Bar staff. Thanks to each for his/her contributions.

Young Lawyer Presidents

The following is a list of those who have served as president of the Young Lawyers Section/ Division of the Utah State Bar. For each person listed is a group of others who served with them as officers, executive committee members, committee chairs and members who have added to the proud tradition of the Young Lawyers. Thanks to all for caring enough and taking the time to make a difference in our profession and communities.

2006-07	David R. Hall	1994-95	David J. Crapo
2005-06	Debra Griffiths Handley	1993-94	Mark S. Webber
2004-05	Candice Anderson Vogel	1992-93	Keith A. Kelly
2003-04	Christian W. Clinger	1991-92	Charlotte L. Miller
2002-03	Victoria C. Fitlow	1990-91	Richard A. VanWagoner
2001-02	Nathan D. Alder	1989-90	Jonathan K. Butler
2000-01	Stephen W. Owens	1988-89	Jerry D. Fenn, Jr.
1999-00	Mark C. Quinn	1987-88	Stuart W. Hinckley
1998-99	Brian W. Jones	1986-87	Paul M. Durham
1997-98	Michael L. Mower	1985-86	John A. Adams
1996-97	Daniel D. Anderson	1984-85	Cecelia Espenosa
1995-96	Martin N. Olsen	1983-84	Colin P. King

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Carl Steffen was named a Certified Business Appraiser by the Institute of Business Appraisers. Carl is also an Accredited Senior Appraiser through the American Society of Appraisers, is Accredited in Business Valuation through the AICPA, and is accredited as a Certified Valuation Analyst through the National Association of Certified Valuation Analysts. He is currently one of only ten individuals who hold all four business valuation designations nationwide, and is the only CPA in Utah accredited in business valuation by all four professional organizations. He received a Masters of Science in Taxation and a Masters of Business Administration from Golden Gate University, San Francisco, and University of California, Berkeley, respectively.

ROBERT S. SLY, JR., ASA, MBA

Rob Sly was awarded the Accredited Senior Appraiser designation by the American Society of Appraisers. Rob has experience performing valuation analyses for some of the largest, publicly traded companies in the technology and biotechnology fields and specializes in business valuations associated with the purchase and sale of business interests, mergers and acquisitions, estate and gift taxes, and litigation support. Further, he also has experience conducting purchase price allocations, intangible asset valuations, and SFAS 142 goodwill impairment analysis for a variety of companies in a variety of industries. He received a Masters of Business Administration and a Bachelor of Arts degree from Brigham Young University.

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Richard D. Ford is a retired Special Agent/Supervisory Special Agent of the Federal Bureau of Investigation, with extensive experience in Crisis Management, Hostage Negotiations, and Counter-Terrorism Operations. He served as Program Manager of the Terrorist Groups Unit of the International Terrorism Operations Section, and was Liaison with the U.S. Department of State on hostage negotiation policy and ransom issues. He was sent to more than 20 foreign countries in support of priority investigations. Mr. Ford is currently the President of Ford International Security, Inc., an international security consulting company with headquarters in Salt Lake City.

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Congratulations on 75 Years!

by Kathryn K. Shelton, Chair

Seventy-five years is a remarkable achievement for any one or any thing. My father is approaching this remarkable age and as I watch him age with grace and dignity, I realize that the decisions, experiences, education and choices he made through all of those years, as well as the people he has encountered and touched, truly made him who he is today. My father is a wise man – educated, objective, and benevolent. He is a man of great integrity and character. Not unlike my almost 75 year old father, we note that the now 75 year old Utah State Bar has succeeded because it has been built upon principles of education, objectivity, integrity and character. The Bar is the governing and regulating authority for the attorneys in the State but its intrinsic value rests with its members who hold a wealth of wisdom, experience and integrity and that bring honor to its name and to the profession of law. It will be the Bar's responsibility to continue to ensure the professionalism exhibited by so many members in the past 75 years is continued into the next 75 years.

As my father's life exemplifies, the Utah State Bar will be only as good as the choices and character of the people that comprise its membership. As the Bar administers to and governs its members it continues to ensure the community is provided with excellent legal services.

I have been privileged to know many lawyers in my 23 years

working in the legal field. It has been my privilege to work with and support some of the best attorneys in the profession – Brent Stevenson, Rob Lence, Paul Durham and others. Every one of these attorneys has exhibited the highest ideals of the legal profession. These attorneys have taught me that the delivery of quality legal services consists not only of providing the highest service to your clients, but of personally maintaining the highest standards of integrity and ethics as you provide the service. I am grateful for their tutoring and mentoring and am pleased to have known them and so many others who are an asset to the legal profession during my career. Professionals like these will ensure the continuing success of the Bar and these people are truly lighthouses for the legal profession.

The Paralegal Division is proud to join with attorneys, community and civic leaders, and the public at large in celebrating and congratulating the Utah State Bar on their 75th anniversary. The continuing success of the Utah State Bar and the continuing excellence of its leadership in this state and of the attorneys it represents are necessary for each citizen of this state. Certainly, as paralegals we are keenly aware of the value of providing clients with excellent legal services and we support the Utah State Bar's efforts in ensuring quality of legal services and true justice for all. It is a pleasure to support the Utah State Bar and the attorneys in their profession. Congratulations!

Paralegal Division's Role in the History of the Utah State Bar

The Paralegal Division is pleased to participate in the celebration and recognition of the Utah State Bar's 75th Anniversary. While paralegals are not new to the legal field, the Paralegal Division is a relatively new addition to the Bar, having just celebrated its ten year anniversary earlier this year. The Division is a wonderful example of the Mission and Vision of the Bar and commitment of Bar leadership to serving attorneys and our community.

In July of 1994 a proposal was made to the Bar Commission for creation of a Legal Assistant Division. A petition for the creation of the Division was approved by the Bar in October of 1994. Finally, in March of 1996, the Supreme Court of Utah signed an order creating a legal assistant/paralegal division of the Bar, now known as the Paralegal Division, effective April of 1996. The Division held their first annual meeting in the summer of 1996 at which time the first Chair was elected. Work began to form an

Executive Committee and leadership. The wheels were set in motion in 1996 and the Division has been going full throttle ever since?

The Division was created, in part, to assist with the need for access to affordable and low cost quality legal services and to work toward the protection of the public from unqualified persons who provide assistance in law-related situations. Members of the Paralegal Division have met membership requirements that demonstrate training and experience. In today's legal field, there is scarcely a law office or legal department that operates without a paralegal. Paralegals are an integral part of any legal team and when used effectively and properly, can assist attorneys in meeting the legal needs of our community.

Many things have changed within the Division over the last ten

years, but the original intent and dedication endure. Leadership of the Division works constantly to promote membership; set a standard of professionalism, ethics, and competence for paralegals; and to educate members of the legal field as to the importance of paralegal services both to an employer and to the public.

The Paralegal Division is proud to be part of the Utah State Bar and looks forward to celebrating this milestone. The Bar continually grows and improves, as evidenced by the creation of this division, and the Paralegal Division leadership plans to follow that example as it works to remain a productive, involved, and effective Division of the Bar. There have been many accomplishments within the Paralegal Division over the last decade. Following is a sampling of the progress, work and involvement of the Division which serves as evidence of the role the Division in fulfilling the Bar's Mission and Vision:

1996-1997

- Membership Committee formed to study and draft membership requirements
- Bylaw committee formed to draft bylaws

1997-1998

- Formed group to study licensing issue at Bar's request and submit report on licensing
- Long Range Plan committee formed to study future of LAD and draft report
- Second Annual Meeting of Members: Approved first bylaws

1998-1999

- First Membership Cards Issued
- Third Annual Meeting of Members:
 - First Directors-At-Large elected
 - Long Range Plan approved

1999-2000

- Membership requirements revised
- Fourth Annual Meeting of Members approve new leadership of four Regional Directors

2000-2001

- Study of utilization guidelines
- First Membership Directory published
- Fifth Annual Meeting of Members:
 - Additional Structural changes and regional directors elected

2001-2002

- Utilization guidelines published
- Sixth Annual Meeting of Members: Approve revised Bylaws

2002-2003

- Seventh Annual Meeting of Members: Standing Rules approved
- Bar Section affiliation committee initiated

2003-2004

- Salary Survey Project initiated
- Liaison Member of the LAU added to Board of Directors

- Eighth Annual Meeting of Members:
 - Name changed to the "Paralegal Division" of the Utah State Bar

2004-2005

- Professional Standards implemented
- Membership requirements revised to include part-time and non-traditional population of paralegals
- Ninth Annual Meeting of Members
- Utah's first online salary survey for paralegals
- Established monthly Brown Bag Seminars hosted by Jones Waldo in Salt Lake

2005-2006

- Division Brochure Created and Published
- Web Site Improvements
- Ten Year Anniversary
- Paralegal of the Year Award implemented
- Established team for Law Day 5K
- Tenth Annual Meeting of Members
 - Bylaw Amendment to appoint Chair-Elect as member of the Governmental Relations Committee
- Developed monthly Brown Bag CLE seminars hosted by Smith Knowles and VanCott Bagley in Ogden
- Paralegal Division included in LAP benefits offered to Bar members

2006-

- Community Service Committee established

Paralegal Division Participation in Utah State Bar Events:

- Ex-officio member to the Board of Bar Commissioners
- Member of the Unauthorized Practice of Law Committee
- Member of the Governmental Relations Committee
- Member of the Utah Bar Journal Committee
- Member of the Bar Convention Committees
- Member of the Utah Professionalism Liaison Committee
- Member of the Racial and Ethnic Fairness Committee
- Liaison member to the Utah Minority Bar Association
- Liaison member to the Young Lawyers Division
- Affiliate members of various sections and divisions
- Distinguished Section of the Year in 1998 and in 2001

Community and Other Involvement:

- Volunteer projects with the Assistance League of Utah
- Blood Drive with the Red Cross
- Volunteers participate with the Utah Law Related Education Project Mock Trials
- Donations to And Justice for All
- Supporter of the Estrin Legal Paralegal SuperConference
- Attendees at UMBA's First Fifty Celebration
- Attendees at UMBA's Annual Dinner
- Co-sponsors with LAU of monthly Brown Bag CLE
- Clothing and Food drives




“BAR SHARKS FOR JUSTICE”

UTAH STATE BAR YOUNG LAWYERS DIVISION
Fifth Annual Pool Tournament & Social

 **October 19th, 26th & November 2nd, 2006**

Thursday Evenings Starting at 6:00

Match Times To Be Announced

 **Lumpy's Downtown - A Private Club For Members**
 145 Pierpont Ave, Salt Lake City

 **To register a team**

Go to andjusticeforall.org to download a registration form or call 924-3182.

Registration deadline is October 13, 2006.

 **To join in the social festivities**

Simply come to Lumpy's on any or all of the nights of play. You can socialize with old friends, meet new colleagues and cheer on your favorite team.

Proceeds benefit “and Justice for all”

a non-profit organization providing free civil legal aid to the disadvantaged in Utah

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Lumpy's will also donate 10% of food sales

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