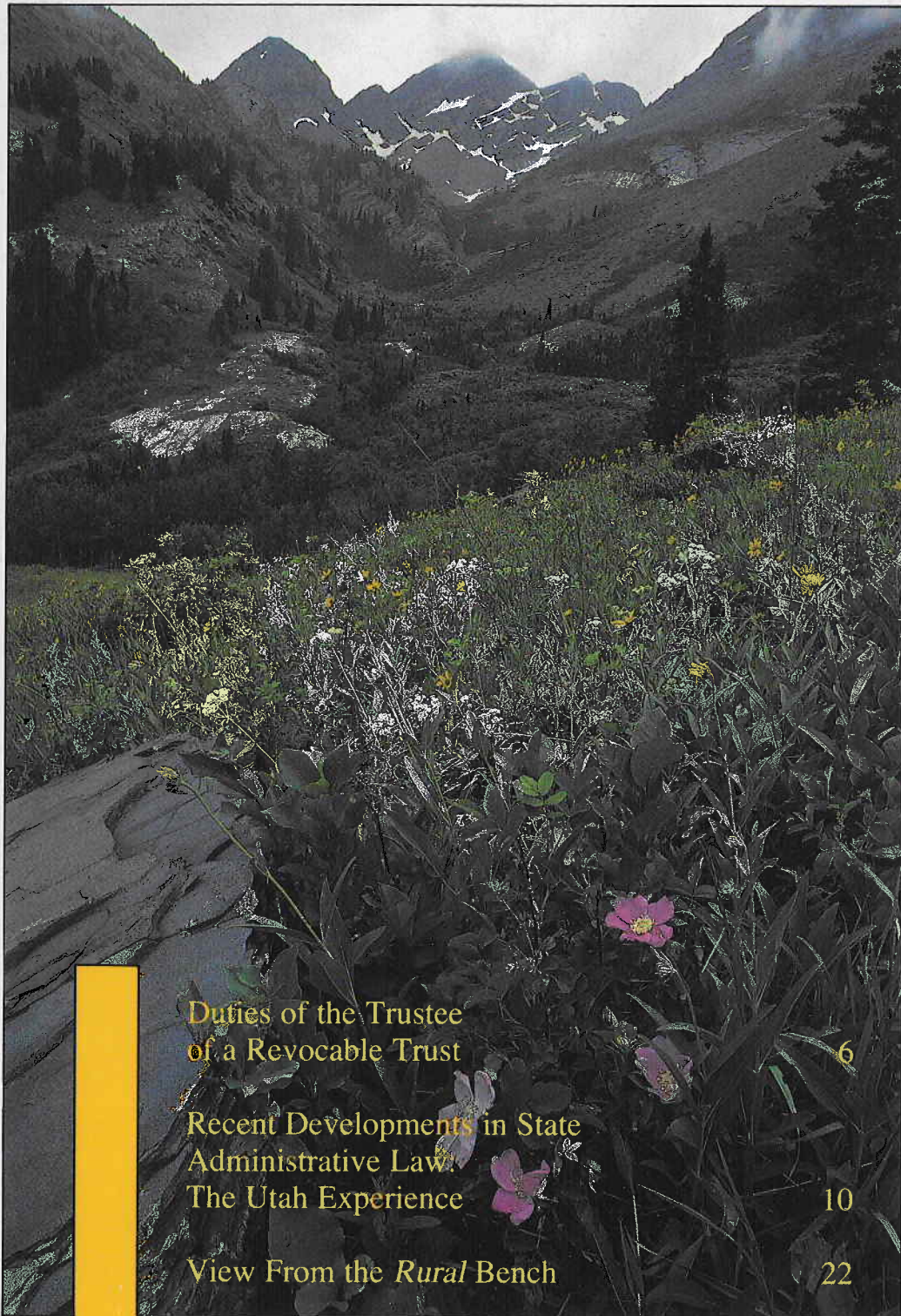


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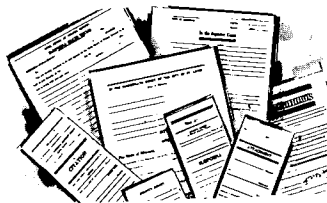
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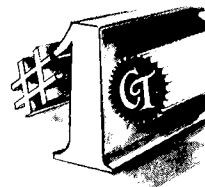


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COVER: "Wild Rose and Twin Peaks," Brand's Fork, Big Cottonwood Canyon, by writer/photographer Stephen Trimble. Mr. Trimble is married to attorney Joanne C. Slotnik, who is Director of Judicial Education, Court Administrator's Office.

The *Utah Bar Journal* welcomes and encourages members of the Utah Bar to submit appropriate art to be considered for use on the *Journal* cover. Contact Randall L. Romrell, Moyle & Draper, 15 E. First S., Sixth Floor, Salt Lake City, UT 84111, (801) 521-0250.

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Are We Kidding Ourselves? 2,200 Billable Hours Per Year

Recently, I attended a meeting of the National Conference of Bar Presidents in Denver. During one of the sessions, the subject of annual minimum billable hours was discussed. To my disbelief, I learned that some of the East and West Coast firms were now requiring their associates to bill 2,500 to 2,700 hours per year. I also learned that incoming associates in those firms were starting at about \$75,000 per year. Frankly, those numbers dumbfounded me. Upon doing some further investigating, I learned that some Salt Lake firms are paying their new associates \$50,000-plus their first year and requiring 2,000 to 2,200 minimum billable hours per year.

Take a minute and think about that type of requirement. If 2,200 hours is the minimum, that means that each of those lawyers has to bill seven hours per day, six days a week, 52 weeks a year. I repeat:

2,200 hours per year equates to,

Seven hours per day

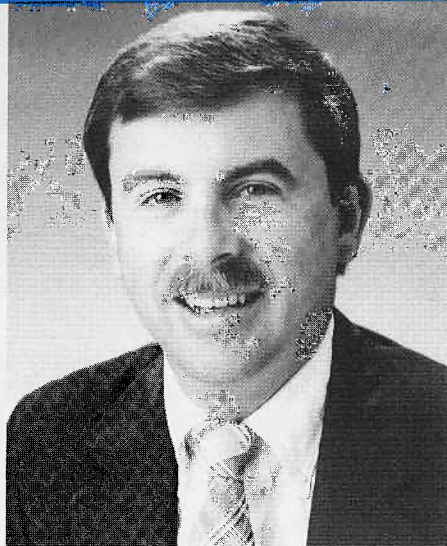
Six days per week

Fifty-two weeks per year

These are billables and don't include office administration, legal education, pro bono or Bar work hours.

Need I say more?! Something is really wrong with those figures. I can only conclude that one of two things is happening to our young lawyers. Either we're imposing work requirements on our lawyers that will have long-term devastating effects on their professional and personal lives or we are creating a situation where they can only meet their minimum billables and thereby keep their jobs by (and I hate to say it) "padding their time" or performing tasks not germane or necessary to the reasonable and adequate handling of the client's case.

Hopefully, it is the former that is occurring and not the latter. However, even if it is the former, I think it is time that the lawyers who have the responsibility for establishing those minimum standards consider the long-term effect of their decisions on the legal profession and its members. How can we lawyers act as professionals and as public spirited members of our community when



Kent Kasting

we are required to "bill seven hours a day, six days a week, 52 weeks per year"? It makes neither professional nor business sense to have lawyers so overworked that they are miserable to each other, miserable to their families (if they still have one) and perhaps even delivering a miserable product to their clients. I for one didn't decide to become a lawyer so that I could be miserable.

To the contrary, being a professional means not merely being civil to other lawyers and judges, it means caring about the quality of one's work, caring enough to continue to educate oneself in the discipline of the practice of law; caring enough to foster improvements in our profession through participation in Bar activities and it means participating in the affairs of one's community, in pro bono work, and in civic and charitable projects. In sum, it means striking a balance between practicing law and doing all of the other things a person must continue to do in order to be that well-balanced professional we all strive to be.

It doesn't take much persuasion to conclude that a lawyer can't achieve that goal if he or she is billing at least seven hours a day, six days a week, 52 weeks a year. It also doesn't take much to conclude that such requirements may have unknown yet far-reaching and detrimental effects on those lawyers. Possibilities include potential domestic strife, chemical dependency and stress-related illness and narrowing of focus to an extent which would inhibit if not preclude lawyers from continuing to develop the skills necessary to solve all types of problems for the people and businesses they serve.

I urge each of you charged with the responsibility of developing and grooming your lawyers into seasoned practitioners that you consider the long-term consequences of the requirements you impose, not only to the well-being of the lawyer working for you, but also for the continued respect and integrity of the legal profession.

By saying what I've just said, perhaps I will be perceived by those who have to bill that 2,200 hours per year as a champion of human rights and elimination of sweatshop practices. There is a *quid pro quo*, however. If the new lawyers didn't have to be paid as much, the firms would not have to require them to bill so many hours and that goes to the second point of my message.

I think it's time for law students, new graduates and, for that matter, law schools to analyze and determine what the true reasons are for a person's pursuit of a law degree and admission to the practice of law. If it is for the acquisition of material wealth and the desire to accumulate "things," then I think our profession is in serious trouble. That is so because the focus of our future members will not be service to others with monetary return being a byproduct of that service, but rather monetary return being the product and service of the byproduct. If that focus changes, then I predict there will be increasing dissatisfaction with the practice of law as a career choice, an increase in the numbers of skilled practitioners leaving at a time when their skills and talents are at an apex and for those that stay, they will be business persons first and lawyers second. I would hope that each of these predictions don't come true.

I believe partners, associates, law students and law schools must rethink and perhaps reorder their priorities and in that regard I make the following challenges to each.

To Partners: Adapt a reasonable billing requirement which includes time for pro bono and Bar work, personal and professional improvement, and family and civic activities. Also avoid getting into a bidding war with other firms which end in unrealistic starting salaries for new lawyers.

To Young Lawyers and Law Students: Re-evaluate the reasons you want to practice law. If those are primarily for financial gain, then rethink because you will not be a professional in the true sense of the word.

To Law Schools: Commit as much if not more money, time and effort to programs on

professionalism as are spent on placement programs.

I sincerely believe, if those challenges are accepted, our profession will be strengthened from within and we as lawyers and judges will all benefit. If they are not accepted or if we choose to ignore what I've tried to say, our profession could be in serious trouble and our members will be prevented from experiencing those things that good, competent, balanced, lawyers are entitled to as true professionals.

Tuesday Night Bar

Its history is short, but if the last few weeks are a true indication, the Tuesday Night Bar at the Law and Justice Center has a bright future. But in order to assure its continuation, more Utah attorneys are needed.

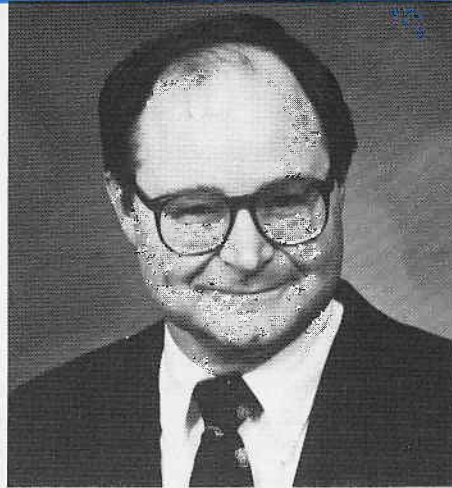
The Tuesday Night Bar is a program which provides legal assistance and referral to the public. On a once each week basis, individuals may make an appointment for "legal first aid" and evaluation of their problem. The consulting attorney assesses the situation and makes a referral to an appropriate agency or to an attorney through the Utah State Bar's Lawyer Referral Program. Experience to date indicates that many problems can be resolved on the spot.

Lawyers who participate in the program will meet with the individuals who have previously scheduled appointments. The Bar staff handles the paperwork and scheduling. "Clients" may schedule appointments on Tuesdays from 4:30 p.m. until 7:00 p.m. by calling the Utah State Bar.

Participating lawyers will be called upon approximately four times each year, or more if they wish. Information regarding the program and time commitment can be provided by contacting Kaesi Johansen at the Utah Law and Justice Center, 531-9077.

According to Cecelia M. Espenosa, Chair of the Young Lawyers Committee on the Tuesday Night Bar, the program is extremely beneficial. "Real people are bringing real legal problems to the program," she said. "Not only are we providing important resources to these people, we are giving them some peace of mind."

During the first few months of the program, approximately 30 appointments were being scheduled each week.



Judicial Criticism Criticized

By James R. Holbrook

In the past year, several prominent prosecutors publicly have criticized both federal and state trial judges for rulings and sentencings in high profile criminal cases. This conduct can pose a serious problem for the fair and independent administration of justice.

Our country has empowered our system of lawyers and courts to be our society's primary dispute resolution mechanism. This system, in turn, extends to qualified lawyers the privilege of a legal monopoly to engage in the authorized practice of law. The success of our system depends in large measure upon public confidence in lawyers and judges performing their responsibilities in a manner such that litigants believe they have been treated fairly and justly and are willing to abide by the result even when they lose.

Obviously, intemperate criticism of judges by lawyers undermines public confidence in our system, and lessens respect for both judges and lawyers, because it appears to the public that lawyers are not willing to abide by the result when they lose. The public does not understand that lawyers' advocacy skills, which are necessary in court and on appeal, can be inappropriate and even improper when used in the press.

Rule 8.2(a) of the Utah Rules of Professional Conduct provides that "A lawyer shall not make a public statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a

judge. . . ." Presumably, the several lawyers who recently publicly criticized judges have not done so falsely or with reckless disregard of the truth. Nevertheless, their remarks clearly tend to undermine public confidence in our judicial system, however honest or honorable their motivations may have been. As one court has observed, unwarranted criticism "does nothing but weaken and erode the public's confidence in an impartial adjudicatory process." *In re Terry*, 271 Ind. 499, 394 N.E.2d 94, 96 (1979).

In order to preserve and promote the administration of justice, a lawyer's truthful statements and honest personal opinions about judges must be expressed in a careful, constructive way. As members of a self-regulated profession and as officers of the court, we must refrain from unwarranted judicial criticism which otherwise would be permitted to laypersons under the doctrine of constitutionally protected free speech. For example, EC 8-6 of the former Utah Code of Professional Responsibility admonishes a lawyer to "be certain of the merit of his complaint, use appropriate language, and avoid petty criticism, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified."

Judges are at a significant disadvantage in attempting to respond publicly to unwarranted criticism by lawyers. Canon 3(A)(6) of the Utah Code of Judicial Conduct provides that "A judge should abstain from public comment about a pending or impending proceeding in any court. . . ." In this regard, the Comment to Rule 8.2 of the Utah Rules of Professional Conduct exhorts us as follows: "To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized."

Merely for us to avoid false or reckless criticism of judges is not enough. When considering making any remarks which could be construed to be judicial criticism, we should be mindful of and sensitive to maintaining public confidence in our legal system. If we err, we should err on the side of self-restraint which we pledged to do when we took the oath of attorneys when we were admitted to practice law: "I do solemnly swear that . . . I will maintain the respect due to courts and judicial officers, and that I will demean myself uprightly as an attorney and counselor of this Court, so help me God."

