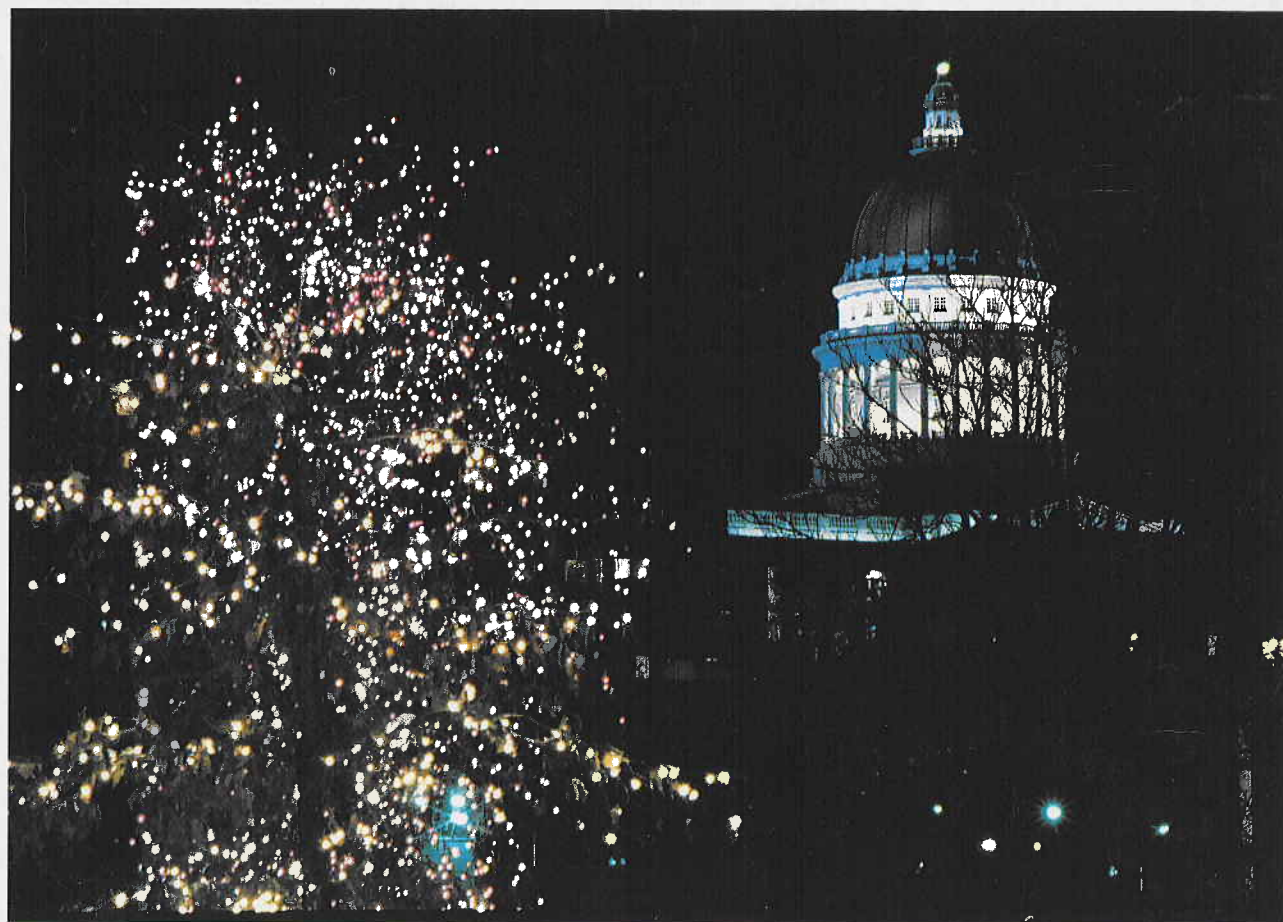


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Belly Up To The Bar

A Warm Welcome to the New Members of Our Association

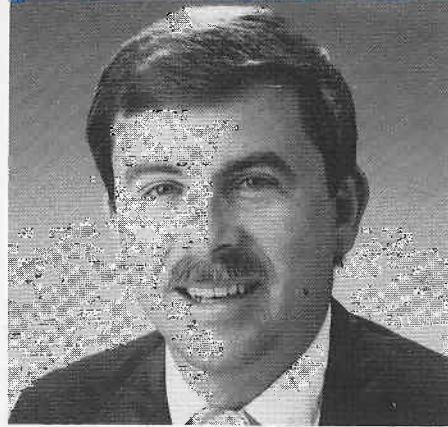
by Kent Kasting

In October, I had the good fortune of making a motion to the Utah Supreme Court and the United States District Court for the Admission of 122 new lawyers as members of the Utah State Bar. By the time you receive this issue of the *Journal*, those new lawyers will have been practicing a couple of months. As President of the Utah Bar, I would like to warmly welcome each of those individuals into our Association.

If you are one of the new admittees, this message is about you and for you. It is also, however, directed to all the practicing members of our Association because as our membership grows so does our responsibility, as seasoned veterans, to become more a part of the professional growth of new lawyers.

Our Bar Association must take the lead in providing guidance to assist new lawyers in bridging the gap from law school to practice. As experienced practitioners, I believe we have a duty to assist and assimilate those new practitioners who have chosen Utah as the place where they wish to pursue their profession—especially women and minorities who now represent 41 percent of law students in law schools nationally. We must actively and affirmatively make these new lawyers aware that we are available to offer assistance and guidance on questions with which they are faced in their first years of practice. In this way, the practicing bar becomes a mentor; the relationships and respect between practitioners are strengthened and the overall quality of the practice of law in Utah is improved. The establishment of an informal mentor relationship benefits not only the new lawyer, but also the organized Bar and the profession as well.

The Bar should strive to assist the new lawyer in his or her professional development, and such projects as Judge Tom Greene's pilot Post Law School Apprenticeship Program and the availability of assistance through the Stewart Hanson, Sr. Society are clear and positive examples of the Bar's willingness to assist new lawyers. To all practitioners, I urge you to become



Kent Kasting

involved and support these programs and to make it known that you are willing to consult with and assist new lawyers with answers to questions of which they may simply not be certain. However, the ultimate responsibility for professional growth is a personal one which rests upon the shoulders of the individual lawyer, be he or she a new admittee or a practitioner of many years.

Therefore, I make the following observations about entrance into and continued advancement within the practice of law.

A couple of years ago, Judge David Winder of the United States District Court for the District of Utah spoke to an audience of new admittees and stressed the extreme importance of striving to develop an exemplary reputation as a lawyer among judges, colleagues and clients. A lawyer's reputation is made in the early years of practice and that reputation, be it good or bad, is the reputation you most likely will have throughout your career. Lawyers, judges, clients and the public will begin sizing you up in terms of integrity, competence, diligence, fairness, judgment and independence from the first day you begin to practice. If your pursuit of those qualities is mediocre, then so, too, will be your reputation as a lawyer.

Each of you has expended great effort and money to become a lawyer, to be trained in logical thought, equity and advocacy. From the first days of your practice, use that training and your talents wisely to represent your clients fairly and to protect and preserve our system of justice. If the talents each of you has are not used in the most honorable of ways, your clients will suffer, our legal profession will suffer and you and your reputation will suffer.

I often ponder the question I would think you, likewise, seek an answer to: How does one become an outstanding lawyer? First, and foremost, it takes simply hard work. It

takes great amounts of time. It places physical and mental demands on you that are difficult to describe to anyone who has not personally experienced those stresses. It requires you to "roll up your shirt-sleeves, get at it and stay at it."

Second, it requires the realization that service to people should be the product of your hard work and efforts, and the monetary return which you receive should be the by-product of your efforts—an appropriate and justifiable by-product, but nonetheless, a by-product.

Third, it requires that you, at all times, keep in perspective your role as a zealous advocate of your clients' causes, bearing in mind your duty to advise wisely and treat all people with whom you deal with dignity, respect and understanding. Hand in hand with that is the very important requirement that you, in all your dealings, are gentlemen and gentlewomen. If you stray from the high standards of gentility, you tarnish your reputation and that of our profession.

Admittedly, the practice of law is demanding. Therefore, it requires that you continuously strike a balance between working hard as a lawyer, family responsibilities, time for yourself, time for your profession and time for your society. In achieving that balance, I urge you to support and become actively involved in your Bar Association. Become involved in the political process—run for the legislature, the school board, or other political office. Join civic groups and share with them the talents you have acquired. Direct your efforts not only to making a living, but also to improving the society in which we live for your own benefit, your family's benefit and the benefit of those to follow.

In a nutshell, get and stay involved in all that is related to the practice of law, not just winning cases and billing hours. The personal rewards you receive will exceed your highest expectations. Avoid apathy like the plague, and be a participant in the process, rather than a spectator. Remember what Abraham Lincoln said in 1855 about becoming a lawyer:

If you are resolutely determined to make a lawyer of yourself, the thing is more than half done already.

Welcome to the practice of law. Welcome to the Utah Bar. I wish each of you much success and I offer to you the services of our Bar Association to assist you in becoming that "outstanding lawyer" that we all strive daily to be.

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COVER: Photograph of the Utah State Capitol at Christmastime, by M. Gordon Johnson of Sandy, Utah.

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James Z. Davis

Problem Makers or Problem Solvers

Over the past several years, one of the most difficult problems faced by the legal profession has been its deteriorating public image, indeed, an image that is deteriorating even among lawyers themselves.

In spite of herculean efforts on the part of Bar Associations and individual lawyers on local, state and national levels, the image of the profession continues to deteriorate. For example, there are virtually no other professions, trade organizations, or groups of virtually any nature that have gone so far as lawyers to attempt to serve the public interest and make the very real, substantive contributions to the public interest. Notwithstanding popular public (and sometimes lawyer) misconception, lawyer discipline far exceeds that of virtually any other group or profession, whether self-imposed or publicly regulated. In addition, lawyers can point with pride to such things as mandatory continuing legal education, *pro bono* work, interest on lawyer's trust accounts programs, the client security fund, a free arbitration procedure, and community leadership at every level. Yet both public and self esteem among lawyers continues to be among the lowest of all callings. Indeed, the cover topic in the November 1988 ABA *Journal* deals with the problems of the image of lawyers.

Many of the writings on the subject in

recent years attempt to identify the problems of lawyers' poor image in various ways, such as lack of professionalism, no sense of obligation to the bar or our system of justice, motivated by greed and self interest, and so on.

The articles in the November 1988 ABA *Journal* tend to be consistent with the conclusions made by most of those observing the problem of the deteriorating image of the legal profession. Unfortunately, the *Journal* articles perpetuate the notion that lawyers engaged in the representation of the "downtrodden", sometimes minorities, sometimes other "public interest" matters, and almost always at some perceived economic sacrifice, are characterized as those who "find self satisfaction" and those who are "making a difference" and "doing someone some good." Lawyers who are more economically successful and choose to represent those who are less than downtrodden are perceived to, for some reason, contribute to the poor image of lawyers regardless of the service they render their clients, their sense of fairness and dedication to the profession, and the time they devote to the profession. The suggestion rings loud and clear: The image of lawyers will not improve unless and until a significant number of our profession dedicate themselves to the downtrodden, and social issues generally.

It may well be, however, that the image of lawyers will not and, indeed, cannot be improved no matter what we do (including devoting more time to correcting social injustice), absent a much more fundamental change than that suggested by many, if not most, students of the issue.

I suggest we change to becoming problem solvers rather than problem makers. One of the most fundamental social goals is the ability of the members of our society to co-exist peacefully and resolve disputes in a peaceful, civilized manner.

The change I suggest, however, requires a re-examination of the role of the adversary system as a problem solving mechanism, or at least a new definition of zealous advocacy. Ambrose Bierce, an American journalist, has been quoted as saying, "A lawsuit is a machine which you go into as a pig and come out of as a sausage." Litigation is probably the activity of lawyers most commonly identified with the profession. Lawyers have been accused of advancing their own objectives by litigating, abusing the deposition process, attacking witnesses, increasing billable hours, raising issues that should not be raised and making frivolous and nonmeritorious claims in the hope of extracting a settlement. All too often, in the litigation process, one or more of the allegations are true. Sadly, one or

more of these allegations may be true because, quite simply, these kinds of tactics all too often work and work well. Few lawyers would suggest that the adversary system demands anything less of them than a zealous pursuit of their clients' objectives within the boundaries of the Rules of Professional Conduct and professional courtesy. The adversary system, which, in our jurisprudence, has been touted as the most effective way to arrive at the truth is, by itself, an extremely damaging process in many, if not most, types of cases; and it has the effect of frequently creating many more problems than it was ever envisioned that the system would solve.

Problem solving and genuine concern for a just and equitable result is not the exclusive province of lawyers involved in so-called "public interest" pursuits. It should be every lawyer's goal, and it should not be abandoned because of an overly restrictive definition of zealous advocacy. Former Chief Justice Burger said in a presentation to the American Law Institute in 1986, "The true function of our profession should be to gain an acceptable result in the shortest possible time with the least amount of stress and at the lowest possible cost to the client. To accomplish that is the true role of the

advocate." Lawyers who are frequently characterized as greedy and concerned only with the interests of themselves and their wealthy clients, are in a uniquely strong position to enhance the image of the profession by styling themselves as problem solvers, rather than problem makers. The ripple effect of a problem solving approach by members of our profession who represent powerful elements of our civilization may well be much more far reaching than the efforts of those currently perceived as problem solvers and having the public interest at heart.

If the legal profession is dedicated to problem solving, rather than problem making, our image problem will take care of itself.

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